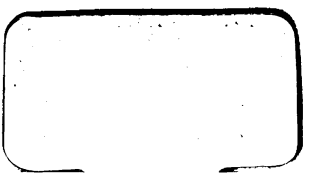

THE CODE OF CRIMINAL PROCEDURE,

OF THE

STATE OF NEW YORK.

WITH NOTES OF DECISIONS,

A TABLE OF SOURCES,

COMPLETE SET OF FORMS,

AND

A FULL INDEX.

FOURTH REVISED EDITION.

BANKS & BROTHERS,
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1884.

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Printers, Stereotypers, Paper Makers and Binders,
ALBANY, N. Y

CERTIFICATE.

STATE OF NEW YORK,
OFFICE OF THE SECRETARY OF STATE, } ss.:

I, Joseph B. Carr, Secretary of State, do hereby certify that the following book contains a correct transcript of the Code of Criminal Procedure, passed June 1, 1881, and the acts amendatory thereof.

In witness whereof, I have hereto set my signature, at the city of Albany, this fifth day of July, in the year one thousand eight hundred and eighty-four.

JOSEPH B. CARR,
Secretary of State.

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§ 928.
Id., § 42.

§ 929.
Id.

§ 930.
Id., § 43.

§ 931.
Id., § 44.

§ 932.
Id., § 44.

§ 933.
Id., § 45.

§ 934.
Id., § 46.

§ 935.
Id., § 47.

§ 936.
Id., § 48.

§ 937.
Id., § 49.

§ 938.
Id., § 50.

§ 939.
Id., § 53.

§ 940.
Id., § 54.

§ 941.
3 R. S., 1034, §§ 6, 8, 16, L. 1867, ch. 604, § 1.

§ 942.
Id., §§ 7, 17.

§ 943.
Id., § 18, L. 1867, ch. 604, § 2.

§ 944.
Id., § 18, ch. 604, § 3.

§ 945.
Id., § 20, ch. 604, L. 1867, § 5.

§ 946.
Id., § 19, ch. 604, L. 1867, § 4.

§ 947.
Id., § 19.

§ 948.
Id., § 23.

§ 949.
Id., § 24.

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THE CODE OF CRIMINAL PROCEDURE.

CHAPTER 442, LAWS OF 1881,

AS AMENDED, 1882, 1883 AND 1884.

AN ACT

To establish a Code of Criminal Procedure.

Passed June 1, 1881; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

PRELIMINARY PROVISIONS.

SEC. 1. Title of the Code.
2. Divisions of the Code.
3. No person punishable but on legal conviction.
4. Crimes, how prosecuted.
5. Criminal action defined.
6. Parties to a criminal action.
7 The party prosecuted known as defendant.
8 Rights of defendant in a criminal action.
9. Second prosecution for the same crime prohibited.
10. No person to be a witness against himself in a criminal action or to be unnecessarily restrained.

SECTION **1. Title of Code.** — This act shall be known as the Code of Criminal Procedure of the State of New York.

§ **2. Divisions of the Code.** — This Code is divided into six parts. The first relates to the courts having original jurisdiction in criminal actions;

The second relates to the prevention of crime;

The third relates to the judicial proceedings for the removal of public officers by impeachment or otherwise;

The fourth relates to the proceedings in criminal actions prosecuted by indictment;

The fifth relates to proceedings in special sessions and police courts;

The sixth relates to special proceedings of a criminal nature.

§ 3. No person punishable but on legal conviction. — No person can be punished for a crime except upon legal conviction in a court having jurisdiction thereof.

Art. 1, § 1, N. Y. Const. No conviction on *ex parte* affidavits. *Ex parte* James, 30 How. Pr., 446.

§ 4. Crimes, how prosecuted. — A crime must be prosecuted by indictment, except

1. Where proceedings are had for the removal of a civil officer of the state on impeachment by the assembly for willful or corrupt misconduct in office;

2. Where proceedings are had for the removal of justices of the peace, police justices and justices of justices' courts and their clerks;

3. A crime arising in the militia when in actual service, and in the land and naval forces in time of war, or which this state may keep with the consent of congress in time of peace;

4. Such crimes as are hereinafter or in special statutes specified as cognizable by courts of special sessions and police courts.

Art. 1, § 6, N. Y. Const.

§ 5. Criminal action defined. — The proceeding, by which a party charged with a crime is accused and brought to trial and punishment, is known as a criminal action.

§ 6. Parties to a criminal action. — A criminal action is prosecuted in the name of the people of the State of New York, as plaintiffs, against the party charged with crime.

§ 7. The party prosecuted known as defendant. — The party prosecuted in a criminal action is designated in this Code as the defendant.

§ 8. Rights of defendant in a criminal action.—In a criminal action the defendant is entitled

1. To a speedy and public trial;

2. To be allowed counsel as in civil actions, or he may appear and defend in person and with counsel; and,

3. To produce witnesses in his behalf, and to be confronted with the witnesses against him in the presence of the court, except that where the charge has been preliminarily examined before a magistrate, and the testimony reduced by him to the form of a deposition in the presence of the defendant, who has, either in person or by counsel, cross-examined, or had an opportunity to cross-examine, the witness, or, where the testimony of a witness on the part of the people, who is unable to give security for his appearance, has been taken conditionally according to sections 219 and 220, the deposition of the witness may be read upon its being satisfactorily shown to the court that he is dead, or insane, or cannot with due diligence be found in the state.

Sub. 1. See 6th Amendt. Const. U. S. Sub. 2. Art. 1, § 6, N. Y. Const. See Peo. ex rel., Garling *v.* Van Allen, 55 N. Y., 31. Sub. 3. Defendant can consent that depositions taken in his presence be read on trial. Wightman *v.* Peo., 67 Barb., 44. No rights before coroner. Crisfield *v.* Perrine, 15 Hun, 200; s. c., 81 N. Y., 622. Escaped prisoner can have no relief. Peo. *v.* Genet, 59 N. Y., 80. Due diligence. Peo. *v.* Murphy, 1 N. Y. Cr., 102.

§ 9. Second prosecution for the same crime prohibited.—No person can be subjected to a second prosecution for a crime for which he has once been prosecuted, and duly convicted or acquitted.

Art. 1, § 6, N. Y. Const. Former trial and conviction, without judgment, sustains a plea of *autre fois convict.* Shepherd *v.* Peo., 25 N. Y., 406. See Peo. *v.* Goodwin, 18 Johns., 200; Peo. *v.* Barrett, 1 id., 66; Id. *v.* Olcott, 2 ib. Cas., 301; Id. *v.* Cramer, 5 Park., 171; Id. *v.* McCloskey, Ib., 57; Id. *v.* Saunders, 4 ib., 196, Id. *v.* Warren, 1 ib., 338; Id. *v.* Allen, ib., 445; Id. *v.* Van Keuren, 5 ib, 66; Id. *v* Krummer, 4 ib., 217; Id. *v.* Townsend, 3 Hill, 479; Canter *v.* Peo., 1 Abb. Dec., 305; Peo. *v.* Krumer, 1 Sheld., 549; Gardiner *v.* Peo., 6 Park., 155; Peo. *v.* Casborus, 13 Johns., 351; Burns *v.* Peo., 1 Park., 182; Peo. *v.* Comstock, 8 Wend., 549. When former judgment reversed, new indictment may be found. Kelly *v.* Peo., 6 Hun, 509. See Peo. *v.* Ruloff, 5 Park., 77. Where wrong judgment rendered on regular conviction, cannot retry. Shepherd *v.* Peo., supra; but may remit record and resentence. Hussey *v.* Peo., 47 Barb., 503. A verdict of conviction on one count, acquits on all others. Guenther *v.* Peo., 24 N. Y., 100; Peo. *v.* Dowling, 23 A. L. J., 353.

§ 10. No person to be a witness against himself, or unnecessarily restrained.—No person can be compelled in a criminal action to be a witness against himself, nor can a person charged with crime be subjected, before conviction, to any more restraint than is necessary for his detention to answer the charge.

Art. 1, § 6, N. Y. Const. Defendant may be required to answer when it cannot be used against him. Perrine *v.* Striker, 7 Pai., 598; Peo. ex rel. Hackley *v.* Kelley, 24 N. Y., 74. How a defendant can waive this privilege. Connors *v.* Peo., 50 N. Y., 240.

PART I.

OF THE COURTS HAVING ORIGINAL JURISDICTION IN CRIMINAL ACTIONS.

TITLE I. OF THE COURTS OF ORIGINAL CRIMINAL JURISDICTION IN GENERAL.
II. OF THE COURT FOR THE TRIAL OF IMPEACHMENTS.
III. OF THE COURTS OF OYER AND TERMINER.
IV. OF THE CITY COURTS.
V. OF THE COURTS OF SESSIONS.
VI. OF THE COURTS OF SPECIAL SESSIONS AND POLICE COURTS.

TITLE I.

Of the Courts of Original Criminal Jurisdiction in general.

SEC. 11. Of the courts of original criminal jurisdiction.

§ 11. Of the courts of original criminal jurisdiction. Special sessions and police courts, when courts of record. — The following are the courts of justice in this state having original jurisdiction of criminal actions:

1. The court for the trial of impeachments;
2. The courts of oyer and terminer;
3. The city courts of Brooklyn, Buffalo, Utica, Oswego and Hudson;
4. The courts of sessions, in counties other than New York;
5. The court of general sessions in the city and county of New York;
6. The courts of special sessions;
7. The police courts.

The courts of special sessions and police courts are deemed inferior courts not of record, within the section of the Constitution which provides for the removal of justices of the peace and judges, or justices of inferior courts not of record, and their clerks, by such county, city or state courts as are designated by law; but for no other purpose.

TITLE II.

Of the Court for the Trial of Impeachments.

SEC. 12. Its jurisdiction.
13. Members of the court.
14. Presiding judge.
15. Clerks and officers.
16. Seal of the court.
17. Time of holding the court.
18. Oath to members of the court.
19. Adjournments, etc.
20. Compensation of members and officers of the court.

§ 12. **Jurisdiction.**—The court for the trial of impeachments has power to try impeachments, when presented by the assembly, of all civil officers of the state, except justices of the peace, justices of justices' courts, police justices, and their clerks, for willful and corrupt misconduct in office.

Art. 6, § 1, N. Y. Const.

§ 13. **Members of the court.**—The court is composed of the president of the senate, the senators, or a majority of them, and the judges of the court of appeals, or a majority of them, but on the trial of an impeachment against the governor, the lieutenant-governor cannot act as a member of the court.

Art 6, § 1, N. Y. Const.

§ 14. **Presiding judge.**—The president of the senate, or in case of his impeachment, death or absence, the chief judge of the court of appeals, or in the absence of both, such other member as the court may elect, is the presiding judge of the court.

§ 15. **Clerks and officers.**—The clerk and officers of the senate are the clerk and officers of the court for the trial of impeachments.

§ 16. **Seal of the court.**—The seal of the court for the trial of impeachments now deposited and recorded in

the office of the secretary of state shall continue to be the seal of this court and must be kept in the custody of the clerk of the senate.

§ 17. Time of holding court.—Upon the delivery of an impeachment from the assembly to the senate the president of the senate must cause the court to be summoned to meet at the capitol in the city of Albany, on a day not less than thirty nor more than sixty days from the day of the delivery of the articles of impeachment.

§ 18. Oath to members of court.—At the time and place appointed, and before the court proceeds to act upon the impeachment, the clerk must administer to the presiding judge, and the presiding judge to each of the members of the court then present, an oath or affirmation truly and impartially to try and determine the impeachment; and no member of the court can act or vote upon the impeachment, or any question arising thereon, without having taken this oath or affirmation.

§ 19. Adjournments, etc.—The court may adjourn from time to time and hold its sessions at such places as it may determine, but no more than two sessions of the court can be held during the recess of the legislature in any one year.

§ 20. Compensation of members and officers.—The writ and process of the court must be signed by the clerk and tested in the name of the president of the senate. The president of the senate and each senator are entitled to receive for their services and expenses while actually attending the court the same rate of compensation as an associate judge of the court of appeals is entitled by law to receive for his services and expenses as such judge for the same time. The other officers of the court, excepting the judges of the court of appeals, are entitled to the same compensation for their attendance thereon, and for traveling to and from the place where it is held, as is allowed them for attending a meeting of the senate, but no such compensation shall be received for attending the court during a session of the legislature.

TITLE III.

Of the Courts of Oyer and Terminer.

SEC. 21. Court of oyer and terminer in each county.
22. Its jurisdiction.
23. By whom held.
24. Writ or process.
25. Clerk.

§ 21. Court of oyer and terminer in each county.—There is in each of the counties of this state, except that for this purpose Fulton and Hamilton are deemed one county, a court of oyer and terminer, with the jurisdiction conferred by the next section and no other, but nothing contained in this section affects its jurisdiction in actions or proceedings now pending therein.

It is a continuous court. Appo *v.* Peo., 20 N. Y., 531; Naughton *v.* Peo., 7 Abb. Pr. [N. S.], 421.

§ 22. Jurisdiction.—The court of oyer and terminer has jurisdiction:

1. To inquire, by the intervention of a grand jury, of all crimes committed or triable in the county; but in respect of such minor crimes as courts of special sessions or police courts have exclusive jurisdiction to hear and determine, in the first instance, the jurisdiction of the oyer and terminer attaches only after the certificate mentioned in section fifty-seven of this Code.

2. To try and determine all such crimes and to try all persons indicted for the same.

3. To deliver the jails of the county, or city and county, according to law, of all prisoners therein.

4. To try any indictment found in the court of sessions of the county, or the court of general sessions of the city and county of New York, which has been sent by order of the court of sessions or general sessions to and received by the court of oyer and terminer, or which has been removed from any court into the court of oyer and terminer, if, in the opinion of that court, it is proper to be tried therein.

5. To exercise the same jurisdiction as a court of sessions in a cause or proceeding transferred according to sections 40 and 41 of this Code.

6. By an order, entered in its minutes, to send any indictment found therein for a crime triable at the court of sessions of the county, or the court of general sessions of the city and county of New York, to such court;

7. To grant new trials in all cases tried therein.

8. To let to bail any person committed, before and after indictment found upon any criminal charge whatever.

9. To exercise the powers conferred upon it by other provisions of this Code and by special statutes.

Court cannot adjourn to place not appointed for holding. Northrup *v.* Peo., 57 N. Y., 203; Flanigan *v.* Peo., 86 N. Y., 554; Peo. *v.* O'Connell, 62 How. P. R., 436; Peo. *v.* Cavanagh, 62 How. Pr., 187.

§ 23. **By whom held.**—A court of oyer and terminer is held by a justice of the supreme court, without an associate.

Art. 6, § 7, N. Y. Const. If justices be changed or absent during trial, it is a mistrial. Shaw *v.* Peo., 3 Hun, 272; Blend *v.* Peo., 41 N. Y., 604. A trial justice cannot testify. Dohring *v.* Peo., 2 S. C., 458; 59 N. Y., 374. See Smith *v.* Peo., 47 N. Y., 330.

§ 24. **Writ or process.**— A writ or process issued out of the court of oyer and terminer must be tested in the name of a justice of the supreme court of the district, and may be directed by the court into any county of the state, as occasion requires.

§ 25. **Clerk.**— Except the clerk of the county of New York, the clerk of each county is, by virtue of his office, the clerk of the court of oyer and terminer held therein.

TITLE IV.

Of the City Courts.

CHAPTER I. The city court of Brooklyn.
II. The superior court of Buffalo.
III. The other city courts.
IV. General provisions relating to city courts.

CHAPTER I.

THE CITY COURT OF BROOKLYN.

SEC. 26. Jurisdiction.
27. By whom held.

§ 26. **Jurisdiction.** — The city court of Brooklyn has criminal jurisdiction:

1. To the same extent and in the same manner, and with the same power as a court of oyer and terminer in the county of Kings in the indictment and trial of all offenses committed in the city of Brooklyn, whenever a bill of indictment for any such offense has been transmitted to the court by the court of sessions or court of oyer and terminer of the county of Kings;

2. To remand any such indictment to the court of sessions or court of oyer and terminer of the county of Kings;

3. To prosecute a forfeited recognizance taken by the court of sessions or court of oyer and terminer of Kings county and binding the party or parties and witnesses to such indictment to appear in the city of Brooklyn.

§ 27. **By whom held.** — Any one of the judges of the city court of Brooklyn may hold a court of criminal jurisdiction.

CHAPTER II.

THE SUPERIOR COURT OF BUFFALO.

SEC. 28. Jurisdiction.
29. By whom held.
30. Terms.

§ 28. **Jurisdiction.** — The superior court of Buffalo has criminal jurisdiction:

1. To inquire by a grand jury of all crimes committed in the city of Buffalo;

2. To try and determine all indictments found therein, or sent thereto by another court for a crime committed in that city;

3. To send any indictment pending therein undetermined to the court of oyer and terminer or to the court of sessions of the county of Erie to be determined according to law;

4. At a general term thereof exclusively to review upon motion on the indictment, with or without a bill of exceptions, its decisions and judgments, and grant new trials.

§ 29. By whom held. — The court for the trial of indictments and the transaction of criminal business other than specified in subdivision 4 of the last section, may be held by any one of the justices thereof.

§ 30. Terms. — There must be at least four terms of the court for the trial of indictments and the transaction of criminal business held in each year to be appointed as prescribed in section 280 of the Code of Civil Procedure.

CHAPTER III.

THE OTHER CITY COURTS.

SEC. 31. Other city courts.
32. By whom held.

§ 31. Other city courts. — The other city courts, having original criminal jurisdiction, are the recorder's court of Utica, the recorder's court of Oswego, and the mayor's court of Hudson. Their jurisdiction in criminal matters is defined by special statutes, and continues as thus defined.

§ 32. By whom held. — These courts for the exercise of their criminal jurisdiction must be held by the following officers:

1. The city courts of Utica and Oswego by the recorders of those cities respectively;
2. The mayor's court of Hudson, by the mayor of that city.

CHAPTER IV.

GENERAL PROVISIONS RELATING TO CITY COURTS.

SEC. 33. Indictments for offenses punishable with death to be sent to oyer and terminer.
34. Indictments for crime not punishable by death.
35. Indictments when to be sent to city court.
36. Court continued beyond terms.

§ 33. **Offenses punishable with death.** — When an indictment is found at a city court for a crime punishable with death, the court may send it to the next court of oyer and terminer of the county.

§ 34. **Crime not punishable with death.** — A city court may also send an indictment found therein and remaining undetermined for a crime not punishable with death to the next court of oyer and terminer of the same county, to be determined according to law. But that court, if, in its opinion, the same is not proper to be tried therein, may remit it back to the court by which it was sent, which must proceed thereon as if it had remained there.

§ 35. **Indictments when sent to city court.** — When an indictment is found at a court of oyer and terminer, or of sessions, in a county embracing any of the cities in which a city court having original criminal jurisdiction is established, for an offense committed in that city, the court in which it was found may send it to the next city court in which it is triable, which must proceed to try and determine the indictment as if it had been found therein.

§ 36. **Court continued beyond terms.** — If the trial of a cause be commenced before the expiration of the term of a city court the court may be continued beyond the term, to the completion of the trial and the rendering of judgment on the verdict.

TITLE V.

Of the Courts of Sessions.

CHAPTER I. The courts of sessions in general.
II. The courts of sessions in counties other than New York.
III. The court of general sessions of the city and county of New York.

CHAPTER I.

THE COURTS OF SESSIONS IN GENERAL.

SEC. 37. General provisions.
38. The courts of sessions.

§ 37. General provisions. — There is in each of the counties of this state a court denominated the court of sessions, with the jurisdiction conferred by the next two chapters and no other, but nothing contained in this section affects its jurisdiction in actions or proceedings now pending therein.

Art. 6, § 15, N. Y. Const.

§ 38. The courts of sessions.—The courts of sessions are

1. The courts of sessions in counties other than New York;

2 The court of general sessions in the city and county of New York.

CHAPTER II.

COURTS OF SESSIONS IN COUNTIES OTHER THAN NEW YORK AND KINGS.

SEC. 39. Jurisdiction.
40. Indictments to be transferred to oyer and terminer.
41. Id.; remitting back.
42. By whom held.
43. Justice disqualified.
44. Same.
45. When and where held; jurors.
46. Jurors, when to be drawn.
47. Clerk.
48. Writ or process.
49. Compensation of justice.

§ 39. Jurisdiction.—The courts of sessions embraced in this chapter have jurisdiction:

1. To inquire by the intervention of a grand jury of all crimes committed or triable in the county; but in respect of such minor crimes as courts of special sessions or police courts have exclusive jurisdiction to hear and determine, in the first instance, the jurisdiction of the sessions attaches only after the certificate mentioned in section fifty-seven of this Code.

2. To try and determine indictments found therein or sent thereto by the court of oyer and terminer of the county or by a city court in the county for crimes not punishable with death.

3. To hear and determine appeals from orders of justices of the peace under the provisions of law respecting the support of bastards.

4. To examine into the circumstances of persons committed to prison as parents of bastards, and to discharge them in the cases provided by law.

5. To try and determine complaints under the provisions of law respecting masters, apprentices and servants;

6. To review the convictions of disorderly persons actually imprisoned, and to execute the powers conferred and duties imposed by law in relation to those persons;

7. To continue or discharge recognizances, undertakings and bonds of persons bound to keep the peace or to be of good behavior, and to inquire into and determine the complaints on which they were founded.

8. To compel relatives of poor persons and committees of the estates of lunatics to support such persons and lunatics in the cases and manner prescribed by law.

9. To exercise the powers conferred by law in relation to the estates of persons absconding and leaving their families chargeable to the public.

10. To let to bail persons indicted therein for any crime triable therein, as provided by law.

11. To let to bail persons committed to the prison of the county before indictment for any offense triable in the court.

12. To discharge persons who have remained in prison without indictment or trial in the cases prescribed by law.

13. To revoke licenses in the cases and mode prescribed by law.

14. To grant new trials in all cases tried therein.

15. To execute such other powers and duties as may be conferred by statute, or are now defined by special statute relating thereto.

§ 40. Indictments to be transferred. — A court of sessions must send every indictment there found for a crime not triable therein to the court of oyer and terminer of the county, or to a city court having jurisdiction to try and determine the same.

§ 41. Id.; remitting back. — A court of sessions may send an indictment pending therein to the court of oyer and terminer of the same county, to be determined according to law, and if such indictment is remitted back without trial by the court of oyer and terminer, the court of sessions may proceed thereon.

§ 42. By whom held.—A court of sessions must be held by the county judge, with two justices of sessions to be designated according to statute. If the justices of sessions, or either of them, fail to attend the commencement of, or during the term, or if his office at such time is or becomes vacant, the county judge, by an order entered in the minutes, may designate any justice of the peace of the county to serve as justice of sessions during the term, or if the order is made by reason of non-attendance, until the absentee attends.

Art. 6, § 15, N. Y. Const. Verdict cannot be received in absence of justices. Hinman *v.* Peo., 13 Hun, 266.

§ 43. Justice disqualified. — Whenever a justice of sessions is disqualified to act in any cause or proceeding pending in a court of sessions, the county judge must designate some other justice of the peace of the county, to act as member of the court during the trial or determination of such cause or proceeding.

General provisions as to disqualifications of judicial officers. See 2 R. S. (6th ed.) p. 436, §§ 2, 7, 8, and cases there cited.

§ 44. County judge disqualified. — If the county judge is, for any cause, incapable of acting in any criminal action or proceeding pending in the court of sessions, the court must transfer the same to the court of oyer and terminer of the county, or to a city court having jurisdiction of such an action or proceeding.

§ 45. When and where held; Juries. — A court of sessions must be held at such times as the county judge

of the county, by order, designates, and at the place where the county courts are held for the trial of issues of fact by a jury. Such order must designate the terms at which a grand or petit jury, or both, or neither, is required to attend; and neither a grand jury nor a petit jury is required to be drawn, or summoned to attend a term thus designated to be held without a jury. The order must be published in a newspaper printed in the county, for four successive weeks previous to the time of holding the first term under such order.

Courts can only be held pursuant to appointment. Peo. v. Moneghan, 1 Park., 570. What is sufficient appointment. Peo. v. Wilcox, 23 How. Pr., 297.

§ 46. **Jurors, when to be drawn.** — If a county judge fail to designate the term at which a grand or petit jury is required to attend, the grand and petit jurors must be drawn and summoned for each term mentioned in the order mentioned in the last section.

§ 47. **Clerk.**—Except in the city and county of New York, and the county of Kings, the clerk of the county is the clerk of the court of sessions thereof.

§ 48. **Writ or process.** — Every writ or process issued out of a court of sessions may be tested on any day of the term in which the court is sitting, and be made returnable on any other day of the same term, or at the next term.

§ 49. **Compensation of justice.** — A justice of sessions is entitled to receive three dollars for each day's attendance at a court of sessions or court of oyer and terminer, and to five cents a mile for traveling expenses in coming to and returning from the court.

CHAPTER III.

THE COURT OF GENERAL SESSIONS IN THE CITY AND COUNTY OF NEW YORK AND THE COURT OF SESSIONS IN THE COUNTY OF KINGS.

SEC. 50. These courts continued; proceedings now pending.
51. Jurisdiction.
52. Division of court.
53. Parts, by whom held.
54. When held and its duration.
55. Accommodation for court and officers.

§ 50. These courts continued; proceedings now pending.—The courts known as the court of general sessions in and for the city and county of New York, and the court of sessions in and for the county of Kings are continued, with the jurisdiction conferred by the next two sections and no other. But nothing contained in this section affects their jurisdiction of actions and proceedings now pending therein.

Removal of indictment. Thompson *v* Peo., 6 Hun, 135; Dolan *v.* Peo., ib, 493; s c., 64 N. Y., 485; Leighton *v* Peo., 88 N. Y., 117.

§ 51. Jurisdiction.—The court of general sessions of the city and county of New York and the court of sessions of the county of Kings have jurisdiction:

1. To try, determine and punish according to law, all crimes cognizable within their respective counties, including crimes, punishable with death or imprisonment in the state prison for life.

2. To exercise, in cases arising in their respective counties the same powers as are conferred by this code upon courts of sessions in other counties.

3. To try and determine any indictment found in the court of oyer and terminer of the county, which has been sent by order of that court to and received by the court of sessions therein; and,

4. To exercise such powers as are now prescribed by special statute relating thereto.

§ 52. Division of court.—The court of general sessions of the city and county of New York is divided into three parts.

§ 53. Parts, by whom held.—Any one of the three parts of the court of general sessions of the city and county of New York may be held by the recorder of the city of New York, or the city judge, or the judge of the court of general sessions. A judge of the court of common pleas for the city and county of New York may also hold it. The court of sessions of the county of Kings

must be held by the county judge of the county of Kings, with two justices of the sessions, designated according to statute.

§ 54. **When held and duration.** — Each part of the court of general sessions in and for the city and county of New York, may be held each month, commencing on the first Monday and continuing so long as, in the opinion of the judge sitting and of the district attorney, the public interest requires, but one part only is required to be held during the months of July and August, and two parts only during the rest of the year.

§ 55. **Accommodation for court and officers. Appointment of clerks, etc.**—The courts have the same power to direct suitable provisions to be made for their accommodation as is now possessed by the supreme court. The recorder, city judge, and judge of the court of general sessions of the city and county of New York must appoint a clerk, and not more than four deputy clerks, two interpreters, and two stenographers. The clerk and deputy clerks so appointed must act also as clerks and deputy clerks of the court of oyer and terminer in the city and county of New York. The county judge of the county of Kings shall, by writing, filed with the county clerk, appoint a clerk of the court of sessions of the county, who shall be removable by him at any time, for incompetency, negligence or official misconduct, in which case he may appoint another. The county clerk of the county must deliver to the clerk of the sessions all books and records of the court of sessions in his custody. The clerk of the sessions may appoint a deputy clerk, and not more than two assistants, and such clerk, deputy and assistants shall receive salaries, respectively, equal to those now paid to the deputy clerk and assistant clerk serving in that court, payable monthly by the treasurer of the county. Such court of sessions shall by an order entered in its minutes adopt a seal, which seal when so adopted shall be the seal of the court of sessions of the county of Kings.

TITLE VI.

Of the Courts of Special Sessions and Police Courts.

CHAPTER I. The special sessions except in the cities of New York and Albany.
II. The special sessions in the city and county of New York.
III. The special sessions of the city of Albany.
IV. The police courts.

CHAPTER I.

THE SPECIAL SESSIONS EXCEPT IN THE CITIES OF NEW YORK AND ALBANY.

SEC. 56. Jurisdiction of courts.
57. Exclusive jurisdiction.
58. Limitation.
59. Trial and punishment of certain crimes.
60. Special sessions in Brooklyn.
61. Id.; in Oswego.
62. By whom held.
63. Recorder of a city to hold court.

§ 56. Jurisdiction of courts.—Subject to the power of removal provided for in this chapter, courts of special sessions, except in the city and county of New York and the city of Albany, have in the first instance exclusive jurisdiction to hear and determine charges of misdemeanors committed within their respective counties as follows:

1. Petit larceny, charged as a first offense.
2. Assault in the third degree.
3. Racing, running or testing the speed of any animal within one mile of the place where any court is held.
4. Wrongfully severing any produce or article from the freehold, not amounting to grand larceny.
5. Selling poisonous substances not labeled as required by law.
6. Wrongfully and maliciously removing, defacing or cutting down monuments or marked trees.
7. Wrongfully destroying or removing mile stones, mile boards or guide boards, or altering or defacing any inscription thereon.
8. Wrongfully destroying any public or toll gate or turnpike gate.
9. Intoxication of a person engaged in running any locomotive engine upon any railroad, or while acting as a conductor of a car, or train of cars, on any such railroad.
10. Setting up or drawing unauthorized lotteries, or printing and publishing an account of any such illegal lottery, game or device, or selling lottery tickets, or procuring them to be sold, or offering for sale or distributing any property depending upon any lottery, or for selling any chances in any lottery contrary to the provisions of law.

11. Unlawfully running, trotting or pacing horses or any other animals.

12. Making or selling slung-shot or any similar weapon.

13. Unlawfully disclosing the finding of an indictment.

14. Unlawfully bringing to or carrying letters from any state prison.

15. Unlawfully destroying or injuring any mill-dam or embankment necessary for the support of such dam.

16. Unlawfully injuring any telegraph wire, post, pier, abutment, materials or property belonging to any line of telegraph.

17. Unlawfully counterfeiting any representation, likeness, similitude or copy of private stamp, wrapper or label of any mechanic or manufacturer.

18. Malicious trespass on lands, trees, or timber, or injuring any fruit or ornamental or shade tree.

19. Maliciously breaking or lowering any canal walls, or wantonly opening any lock-gate or destroying any bridge or otherwise unlawfully injuring such canal or bridge.

20. Unlawfully counterfeiting or defacing marks on packages.

21. Unlawfully setting fire to wood or fallow land, or allowing the same to extend to lands of others, or unlawfully refusing to extinguish any fire.

22. Unlawfully or negligently cutting out, altering or defacing any mark on any logs, timber, wood or plank, floating in any waters of this state or lying on the banks or shores of any such waters, or at any saw-mills or on any island where the same may have drifted.

23. Unlawfully frequenting or attending a steamboat landing, railroad depot, church, banking institution, broker's office, place of public amusement, auction room, store, auction sale at private residence, passenger car, hotel, restaurant, or at any other gathering of people.

24. Unlawfully taking and carrying away the oysters of another, lawfully planted upon the bed of a river, bay, sound, or other waters within the jurisdiction of this state.

25. Removing property out of the county, with intent to prevent the same from being levied upon by execution, or secreting, assigning, conveying, or otherwise disposing of property, with intent to defraud any creditor, or to prevent the property being made liable for the payment of debts; or for receiving property with such intent.

26. Driving a carriage upon any turnpike, road or highway for the purpose of running horses.

27. Cruelty to animals contrary to law.
28. Cheating at games.
29. Winning or losing at any game or play, or by any bet, as much as twenty-five dollars within twenty-four hours.
30. Selling liquors in a court-house or jail contrary to law.
31. Crimes against the provisions of existing laws for the prevention of wanton or malicious mischief.
32. *When a complaint is made to or a warrant is issued by a committing magistrate, for a violation of the laws relating to excise and the regulation of taverns, inns and hotels, or for unlawfully selling or giving to any Indian spirituous liquors or intoxicating drinks.*
33. Such other jurisdiction as is now provided by special statute or municipal ordinance authorized by statute. [Am'd ch. 379 of 1884.]

See Peo. *v.* McTammeny, 1 N. Y. Cr., 440.

§ 57. **Exclusive jurisdiction.**—Upon filing with the magistrate, before whom is pending a charge for any of the crimes specified in the last section, a certificate of the county judge of the county, or of any justice of the supreme court that it is reasonable that such charge be prosecuted by indictment, and fixing the sum in which the defendant shall give bail to appear before the grand jury; and upon the defendant giving bail, as specified in the certificate, all proceedings before the *magistrate* shall be stayed; and he shall, within five days thereafter, make a return to the district attorney of the county of all proceedings had before him upon the charge, together with such certificate and the undertaking given by the defendant thereon; and the district attorney shall present such charge to the grand jury; *provided, however, that no such certificate shall be given except upon at least three days' notice to the complainant or to the district attorney of the county of the time and place for the application therefor.* [Am'd ch. 393 of 1884.]

See ch. 390 of 1879.

§ 58. **Adjournment; trial.**—When a person is brought before a magistrate charged with the commission of any of the crimes mentioned in section fifty-six, and asks that his case be presented to the grand jury, the proceedings shall be adjourned for not less than five nor more than ten days; and if on or before the adjourned day the certificate mentioned in section fifty-seven is not filed with the magistrate before whom the charge is pending, and

bail given by the defendant as therein prescribed, the magistrate shall proceed with the trial, and when the defendant is brought before the magistrate, it shall be the duty of the magistrate to inform him of his rights under section fifty-seven and this section.

§ 59. Trial and punishment of certain crimes.—A court of special sessions having jurisdiction in the place where any of the crimes specified in section fifty-six is committed has jurisdiction to try and determine a complaint for such crime, and to impose the punishment, prescribed upon conviction; unless the defendant obtains the certificate and gives the bail mentioned in section fifty-seven.

§ 60. Special sessions in Brooklyn.— A court of special sessions in the city of Brooklyn has also jurisdiction to try any person arrested in the county of Kings, and brought before it charged with an affray or riot, committed within the county.

§ 61. Id.; in Oswego.—The court of special sessions in the city of Oswego, where held by the recorder, has also jurisdiction over all cases of offenses, crimes against public decency, selling unwholesome provisions, cheats, breaches of the peace, disobeying the commands of officers to render assistance in criminal cases, obstructing officers in the discharge of their duties, adulterating distilled spirits, not delivering marked property, defacing marks or putting false marks on floating timber, all violations against the laws and ordinances of or applicable to the city, when such violation is a misdemeanor, and all attempts to commit any crimes herein named or referred to when such attempt is a misdemeanor.

§ 62. By whom held.— Unless provision is otherwise made by law, a court of special sessions must be held by one justice of the peace of the town or city in which the same is held, and sections two hundred and ninety-three, two hundred and ninety-four, two hundred and ninety-five, three hundred and ten, three hundred and thirty-two, three hundred and thirty-three, three hundred and thirty-four, three hundred and thirty-five, three hundred and thirty-six, three hundred and thirty-seven, three hundred and thirty-eight, three hundred and thirty-nine, three hundred and forty, three hundred and forty-one, three hundred and forty-two and three hundred and fifty-nine to four hundred and fifty, both inclusive, shall apply as far as may be to proceedings in all courts of special sessions or police courts.

§ 63. Recorder may hold court.—A recorder of a city has power to hold a court of special sessions therein.

CHAPTER II.

THE SPECIAL SESSIONS IN THE CITY AND COUNTY OF NEW YORK.

SEC. 64. Jurisdiction.
65. Officers, how appointed.
66. Term of office.
67. Court, when held.

§ 64. Jurisdiction.— The court of special sessions in the city and county of New York has jurisdiction:

1 To try and determine according to law all complaints for misdemeanors, unless the defendant elects to be tried at the court of general sessions, or the court of special sessions sends the case to the court of general sessions for trial;

2. To remit fines imposed by it, and in place of the fine remittted, substitute, in its discretion, imprisonment;

3. By an order entered in its minutes, to declare forfeited the recognizance of a defendant, taken by the court, to appear thereat, upon his failure so to appear;

4. To impose the same punishment as is authorized by statute to be inflicted in like cases tried in the court of general sessions of the peace of that city and county;

5. By warrant attested in the name of any one of the justices authorized to hold the court, signed by the clerk thereof, and entered in the minutes of the court, to enforce its judgments and orders; to bring before the court all accused persons for trial and judgment in all cases in which it has jurisdiction; to issue subpœnas for the attendance of witnesses, attachments for contempt, and other process necessary for the proper conduct of the court;

6. To require the principal in a recognizance to appear at the court, and enter into a further recognizance to keep the peace, or to be of good behavior, or both, toward the people of the state, for a period not exceeding one year, and in default thereof to commit him to prison till he be discharged therefrom according to law.

Peo. *v.* Bernardo, 1 N. Y. Cr., 245.

§ 65. Officers, how appointed.— The police justices of the city and county of New York, by the vote of a majority, have the exclusive power to appoint the clerk, deputy clerk, stenographer, interpreter and other officers of the court of special sessions in the city and county of New York.

§ 66. Term of office.—The term of office of the clerk and deputy clerk of the court of special sessions in the city and county of New York is the same as the term of office of the police justices of that city.

§ 67. Court, when held.—The court of special sessions in the city and county of New York, may be held as often and at such times as the justices thereof may think expedient.

CHAPTER III.

THE SPECIAL SESSIONS IN THE CITY OF ALBANY.

SEC. 68. Jurisdiction.
69. Bail or commitment.
70. Petit larceny; assaults.
71. By whom held; officers to attend.
72. Clerk.
73. Court, when and where held.

§ 68. Jurisdiction.—The court of special sessions in the city of Albany has jurisdiction:

1. To try and determine all cases of petit larceny charged as a first offense, and all misdemeanors, not being infamous crimes, committed within the city.

2. To take recognizances to appear before the court at a succeeding term from persons charged with a crime or misdemeanor, triable therein.

3. To impose and enforce sentence of fine or imprisonment, or both, in the discretion of the court, in all cases within its jurisdiction, upon conviction to the same extent as the court of sessions of the county of Albany could do in like cases.

4. To punish a contempt of court in the same manner and to the same extent as the court of oyer and terminer of the county could do in like cases.

5. In cases where a jury trial is demanded by a defendant, to draw from the jury box containing the names of jurors who reside in the city of Albany such number of names as the recorder or county judge may direct, and to require the sheriff of the county to summon the persons so drawn to appear at the time designated for trial, to impanel a jury of twelve men, to require the attendance of additional jurors and to punish a juror or witness neglecting to appear, in the same manner and to the same extent as the court of oyer and terminer of the county could do in like cases.

6. On motion of the district attorney, to issue a warrant for the arrest of a person who neglects to appear agreeably to the requirements of a recognizance to appear thereat, commanding the officer executing the same to bring the party forthwith before the court, if in session, otherwise to commit him to the common jail of the county, there to remain until delivered by due course of law.

See Chap. 284, Laws, 1872, amended, id. 364, Laws, 1881.

§ 69. Bail or commitment.—Upon charges for offenses triable by this court, the police magistrate or any other magistrate in the city hearing the same, shall, if offered, take recognizances in the cases provided by law returnable at the court of special sessions; and all such recognizances as shall have been so taken shall be returned to and filed with the district attorney of the county of Albany. If no such recognizance be offered, the magistrate or magistrates shall commit the defendant to the common jail of the county of Albany until he shall be thence delivered in due course of law, and the trial of such person shall be had before the court of special sessions, except that where a police justice or other magistrate in this city has jurisdiction, the defendant may elect to be tried before such police justice or other magistrate.

§ 70. Petit larceny; assaults on officer.—Whenever a person is brought before a police justice or other magistrate of the city, charged with any of the following crimes, viz.:

Petit larceny charged as a first offense, offenses against the laws relating to excise and the regulation of taverns, inns and hotels, offenses being misdemeanors against the laws relating to gameing.*

Assaults upon, and interference with, a public officer in the discharge of his duty, and it shall appear to the magistrate that the crime has been committed and that there is sufficient cause to believe the defendant guilty thereof, the magistrate must order him to be held to answer the charge before the court of special sessions.

§ 71. By whom held; officers to attend.—The court of special sessions in the city of Albany must be held by the recorder of the city, with or without one or more of the justices of the peace to be associated with him. In case of the absence or inability of the recorder to act, the

* Sic.

county judge of the county of Albany must act in his place. If the recorder and county judge are both unable, by reason of absence or other cause, to hold the court, the clerk must adjourn the court to the next following Tuesday, and continue such adjournments until the recorder or county judge attends. Not more than two officers shall be designated or appointed by the sheriff or other authority to attend the court of special sessions of the city of Albany, unless the court shall, by an order entered in its minutes, require the attendance of a greater number.

§ 72. **Clerk.**—The county clerk of Albany county is clerk of the court of special sessions of the city of Albany, and must attend the same in person or by deputy.

§ 73. **Court, when and where held.**—The court of special sessions of the city of Albany must be held at the city hall in the city of Albany, on Tuesday of each week, and may be held and continued for such length of time as it deems proper.

CHAPTER IV.

THE POLICE COURTS.

SEC. 74. Jurisdiction.
75. Election of justices.
76. Justice to take and file oath of office, etc.
77. Justice, how to hold office.
78. Compensation of justice.

§ 74. **Jurisdiction.**—Police justices have such jurisdiction, and such only, as is specially conferred upon them by statute. The courts held by police justices are called police courts, and courts of special sessions are also called police courts, and are so designated in different parts of the Code.

§ 75. **Election of justices.**—Upon the application in writing of not less than twenty-five electors, inhabitants of any incorporated village in this state in which no provision now exists for the election of a police justice, the board of trustees of such village may determine, by resolution to be entered in their minutes of proceedings, that a police justice should be elected for such village; and if they so determine, the electors of the village may at their next annual election, or at a special election to be called for the purpose, and to be conducted in the same manner as the annual election, choose a police

justice who must be a resident elector of the village; and thereafter a police justice must be elected in such village, at the annual charter election next preceding the expiration of a regular term, or at the next annual election after a vacancy, on the same ticket with the other elective village officers. Any vacancy must be filled by appointment by the board of trustees of the village.

§ 76. Justice to take oath, etc.—A police justice elected or appointed as prescribed in the last section must, before entering upon the duties of his office, and within fifteen days after receiving notice from the village clerk of his election or appointment, take before the clerk, the constitutional oath of office, and file the same with the clerk, together with a bond with such sureties and in such amount as shall be approved by the board of trustees of the village, conditioned for the faithful performance of his official duties.

§ 77. Justice, how to hold office.—A police justice elected or appointed as prescribed in section 75, holds his office as follows:

1. If elected at the first election held after the creation of the office, he must enter upon the duties of his office immediately after qualifying, as prescribed in the last section, and may hold his office until and including the thirty-first day of December, in the third year succeeding his election.

2. If elected at any subsequent election, except as prescribed in the next subdivision, he must enter upon the duties of his office on the first day of January succeeding his election and may hold his office for three years.

3. If elected to fill a vacancy, he must enter upon the duties of his office immediately after qualifying, as prescribed in the last section and may hold his office for the unexpired term.

4. If appointed, he must enter upon the duties of his office immediately after qualifying as prescribed in the last section, and may hold his office until his successor is elected and qualifies.

§ 78. Compensation of justice.—A police justice cannot retain to his own use any costs or fees, but may receive for his services an annual salary, to be fixed in villages by the board of trustees, and in cities by the common council, except where the same is otherwise fixed by law; and such salary shall not be increased or decreased during his term of office.

PART II.

OF THE PREVENTION OF CRIME.

TITLE I. OF LAWFUL RESISTANCE.
II. OF THE INTERVENTION OF THE OFFICERS OF JUSTICE.

TITLE I.

Of Lawful Resistance.

CHAPTER I. General provisions respecting lawful resistance.
II. Resistance by the party about to be injured.
III. Resistance by other parties.

CHAPTER I.

GENERAL PROVISIONS RESPECTING LAWFUL RESISTANCE.

SEC. 79. Lawful resistance; by whom made.

§ 79. Lawful resistance. — Lawful resistance to the commission of a crime may be made:

1. By the party about to be injured;
2. By other parties.

CHAPTER II.

RESISTANCE BY THE PARTY ABOUT TO BE INJURED.

SEC. 80. In what cases; to what extent.

§ 80. In what cases.—Resistance sufficient to prevent the crime may be made by the party about to be injured:

1. To prevent a crime against his person;
2. To prevent an illegal attempt by force to take or injure property in his lawful possession.

Sub. 1. A person attacked if justified in reasonably apprehending great bodily harm and the danger imminent may kill his assailant. Shorter *v.* Peo., 2 N. Y., 193; Patterson *v.* Peo., 46 Bar., 625; see Peo. *v.* Lamb, 54 Bar., 342; Peo. *v.* Austin, 1 Park., 154; Peo. *v.* Cole, 4 Park., 35; Pfomer *v.* Peo., Ib., 558; Uhl *v.* Peo., 5 ib., 410. Party assailed must avoid attack if possible to justify resistance. Peo. *v* Sullivan, 7 N. Y., 396; Peo. *v.* Cole, sup.; Peo. *v.* Harper, Edm. S. C., 180; Shorter *v.* Peo., sup. Re-

sistance to prevent consummation of a felony. See Ruloff *v.* Peo., 45 N. Y., 213; Peo. *v.* Hand, 4 Alb. L. J., 91 Need not first invoke protection against anticipated assault. Evers *v.* Peo., 3 Hun, 716; 63 N. Y., 625. Sub. 2. Defense of possession of real property. Corey *v.* Peo., 45 Barb., 262; Wood *v.* Phillips, 43 N. Y., 152; Peo. *v.* Gulick, Lalor, 229; Harrington *v.* Peo., 6 Barb., 607. Defense of personal property. Gyre *v.* Culver, 47 Barb., 592.

CHAPTER III.

RESISTANCE BY OTHER PARTIES.

SEC. 81. In what cases.

§ 81. In what cases.— Any other person, in aid or defense of the person about to be injured, may make resistance sufficient to prevent the injury.

TITLE II.

Of the Intervention of the Officers of Justice.

CHAPTER I. Intervention of public officers in general.
II. Security to keep the peace.
III. Police in cities and villages, and their attendance at exposed places.
IV. Prevention and suppression of riots.

CHAPTER I.

INTERVENTION OF PUBLIC OFFICERS IN GENERAL.

SEC. 82. In what cases.
83. Persons acting in their aid, justified.

§ 82. In what cases.— Crimes may be prevented by the intervention of the officers of justice,

1. By requiring security to keep the peace;
2. By forming a police in cities and villages, and by requiring their attendance in exposed places;
3. By suppressing riots.

§ 83. Persons in aid, justified.—When the officers of justice are authorized to act in the prevention of crime, other persons, who by their command act in their aid, are justified in so doing.

CHAPTER II.

SECURITY TO KEEP THE PEACE.

SEC. 84. Information of threatened crime.
85. Examination of complainant and witnesses.
86. Warrant of arrest.
87. Proceedings, on complaint being controverted.
88. Person complained of, when to be discharged.
89. Security to keep the peace, when required.
90. Effect of giving or refusing to give security.
91. Person committed for not giving security, how discharged.
92. Undertaking, to be transmitted to sessions.
93. Security, when required, for assault, etc., in presence of a court or magistrate.
94. Appearance of party bound, upon his undertaking.
95. Person bound, may be discharged, if complainant does not appear.
96. Proceedings in sessions, on appearance of both parties.
97. Undertaking, when broken.
98. Undertaking, when and how to be prosecuted.
99. Security for the peace not required except according to this chapter.

§ 84. **Information of threatened crime.**—An information may be laid before any magistrate that a person has threatened to commit a crime against the person or property of another.

§ 85. **Examination.**—When the information is laid before a magistrate, he must examine on oath the complainant and any witnesses he may produce, and must reduce their examinations to writing, and cause them to be subscribed by the parties making them.

§ 86. **Warrant.**—If it appear from such examinations that there is just reason to fear the commission of the crime threatened, by the person complained of, the magistrate must issue a warrant, directed generally to the sheriff of the county, or any constable, marshal or policeman of the city or town, reciting the substance of the information, and commanding the officer forthwith to arrest the person complained of, and bring him before the magistrate.

§ 87. **Trial.**—When the person complained of is brought before the magistrate, if the charge be contro-

verted, the magistrate must take testimony in relation thereto. The evidence must be reduced to writing, and subscribed by the witnesses.

§ 88. Discharge. — If it appear that there is no just reason to fear the commission of the crime alleged to have been threatened, the person complained of must be discharged.

§ 89. Security to keep the peace, when required. — If, however, there be just reason to fear the commission of the crime, the person complained of may be required to enter into an undertaking, in such sum, not exceeding one thousand dollars, as the magistrate may direct, with one or more sufficient sureties, to abide the order of the next court of sessions of the county, and in the meantime to keep the peace towards the people of this state, and particularly towards the complainant.

§ 90. Effect of giving or refusing security. — If the undertaking required by the last section be given, the party complained of must be discharged. If it is not given, the magistrate must commit him to prison, specifying in the warrant, the cause of commitment, the amount of security required, and the omission to give the same.

§ 91. Person committed, how discharged. — If the person complained of be committed for not giving security, he may be discharged by any two justices of the peace of the county, or police or special justices of the city, upon giving the security.

§ 92. Undertaking, to be transmitted to sessions. — An undertaking given as provided in section 89, must be transmitted by the magistrate to the next court of sessions of the county.

§ 93. Security for assault, in presence of court, etc. — A person, who, in the presence of a court or magistrate,

assaults or threatens to assault another, or to commit a crime against his person or property, or who contends with another in angry words, may be thereupon ordered by the court or magistrate, to give security as provided in section 89, or if he refuses to do so, may be committed as provided in section 90.

§ 94. **Appearance of party bound.** — A person who has entered into an undertaking to keep the peace, must appear on the first day of the next term of the court of sessions of the county. If he do not, the court may forfeit his undertaking, and order it to be prosecuted, unless his default be excused.

§ 95. **Discharge, if complainant does not appear.** — If the complainant do not appear, the person complained of may be discharged, unless good cause to the contrary be shown.

§ 96. **Proceedings on appearance of both parties.** — If both parties appear, the court may hear their proofs and allegations, and may either discharge the undertaking, or require a new one, for a time not exceeding one year.

§ 97. **Undertaking, when broken.** — An undertaking to keep the peace is broken, on the failure of the person complained of to appear at the court of sessions, as provided in section 94, or upon his being convicted of any crimes involving a breach of the peace.

§ 98. **Undertaking, when and how prosecuted.** — Upon the district attorney producing evidence of such conviction to the court of sessions to which the undertaking is returned, that court must order the undertaking to be prosecuted; and the district attorney must thereupon commence an action upon it in the name of the people of this state.

§ 99. **Security not required except according to this chapter.** — Security to keep the peace or be of good behavior, cannot be required, except as prescribed in this chapter.

CHAPTER III.

POLICE IN CITIES AND VILLAGES, AND THEIR ATTENDANCE AT EXPOSED PLACES.

SEC. 100. Organization and regulation of the police.
101. Force to preserve the peace, at public meetings, when and how ordered.

§ 100. Organization and regulation of the police.—The organization and regulation of the police in the cities and villages of this state are governed by special statutes.

§ 101. Public meetings.—The mayor or other officer having the direction of the police in a city or village, must order a force, sufficient to preserve the peace, to attend any public meeting, when he is satisfied that a breach of the peace is to be apprehended.

CHAPTER IV.

PREVENTION AND SUPPRESSION OF RIOTS.

SEC. 102. Powers of sheriff or other officer, in overcoming resistance to process.
103. His duty to certify to court the names of resisters and their abettors.
104. Duty of a person commanded to aid the officer.
105. When governor to order out a military force, to aid in executing process.
106. Magistrates and officers to command rioters to disperse.
107. To arrest rioters, if they do not disperse.
108. Consequences of refusal to aid the magistrates or officers.
109. Consequences of neglect or refusal of a magistrate or officer to act.
110. Proceedings, if rioters do not disperse.
111. Officers who may order out the military.
112. Commanding officer and troops to obey the order.
113. Armed force to obey orders.
114. Conduct of the troops.
115. Governor may, in certain cases, proclaim a county in a state of insurrection.
116. May call out the militia.
117. May revoke the proclamation.

§ 102. Overcoming resistance to process.—When a sheriff or other public officer, authorized to execute pro-

cess, has reason to apprehend that resistance is about to be made to the execution of the process, he may command as many male inhabitants of his county as he thinks proper, and any military company or companies in the county, armed and equipped, to assist him in overcoming the resistance, and if necessary, in seizing, arresting and confining the resisters and their aiders and abettors, to be punished according to law.

§ 103. Return of the names of resisters and abettors.—The officer must certify to the court from which the process issued, the names of the resisters and their aiders and abettors, to the end that they may be proceeded against for contempt.

§ 104. Duty of a person to aid the officer.—Every person commanded by a public officer to assist him in the execution of process, as provided in section 102, who, without lawful cause, refuses or neglects to obey the command, is guilty of a misdemeanor.

§ 105. When governor to order out a military force.—If it appear to the governor, that the power of the county is not sufficient to enable the sheriff to execute process delivered to him, he must, on the application of the sheriff, order such a military force from any other county, or counties, as is necessary.

§ 106. Magistrates and officers to command rioters to disperse.—When persons to the number of five or more, armed with dangerous weapons, or to the number of ten or more, whether armed or not, are unlawfully or riotously assembled in a city, village or town, the sheriff of the county and his under-sheriff and deputies, the mayor and aldermen of the city, or the supervisor of the town, or president or chief executive officer of the village, and the justices of the peace or the police justices of the city, village or town, or such of them as can forthwith be collected, must go among the persons assembled, and command them, in the name of the people of the state, immediately to disperse.

§ 107. **Arrests.** — If the persons assembled do not immediately disperse, the magistrates and officers must arrest them, or cause them to be arrested, that they may be punished according to law; and for that purpose, may command the aid of all persons present or within the county.

§ 108. **Consequences of refusal to aid.** — If a person so commanded to aid the magistrates or officers, neglect to do so, he is deemed one of the rioters, and is punishable accordingly.

§ 109. **Neglect or refusal of magistrate or officer to act.** — If a magistrate or officer having notice of an unlawful or riotous assembly, mentioned in section 106, neglects to proceed to the place of the assembly, or as near thereto as he can with safety, and to exercise the authority with which he is invested for suppressing the same and arresting the offenders, he is guilty of a misdemeanor.

§ 110. **Proceedings, if rioters do not disperse.** — If the persons assembled, and commanded to disperse, do not immediately disperse, any two of the magistrates or officers mentioned in section 106, may command the aid of a sufficient number of persons, and may proceed in such manner as in their judgment is necessary, to disperse the assembly and arrest the offenders.

§ 111. **Officers who may order out the military.** — When there is an unlawful or riotous assembly, with intent to commit a felony, or to offer violence to person or property, or to resist by force the laws of the state, and the fact is made to appear to the governor, or to a judge of the supreme court, or to a county judge, or to the sheriff of the county, or to the mayor, recorder or city judge of a city, either of those officers may issue an order directed to the commanding officer of a division, brigade, regiment, battalion or company, to order his command, or any part of it (describing the kind and number of troops), to appear at a specified time and place to aid the civil authorities in suppressing violence and enforcing the law.

§ 112. Commanding officer and troops to obey the order. — The commanding officer, to whom the order is given, must forthwith obey it; and the troops required must appear at the time and place appointed, armed and equipped with amunition as for inspection, and render such aid.

§ 113. Armed force to obey orders. — When an armed force is called out for the purpose of suppressing an unlawful or riotous assembly, it must obey the orders in relation thereto, of either of the officers mentioned in section 111.

§ 114. Conduct of the troops. — Every endeavor must be used, both by the magistrates and civil officers, and by the officer commanding the troops, which can be made consistently with the preservation of life, to induce or force the rioters to disperse, before an attack is made upon them by which their lives may be endangered.

§ 115. Governor may proclaim a state of insurrection. — When the governor is satisfied that the execution of civil or criminal process has been forcibly resisted in any county, by bodies of men, or that combinations to resist the execution of process by force exist in any county, and that the power of the county has been exerted, and has not been sufficient to enable the officer having the process to execute it, he may, on the application of the officer, or of the district attorney or county judge of the county, by proclamation to be published in the state paper, and in such papers in the county as he may direct, declare the county to be in a state of insurrection.

§ 116. After proclamation. — After the proclamation mentioned in the last section, the governor may order into the service of the state such number and description of volunteer or uniform companies, or other militia of the state, as he deems necessary, to serve for such term, and under the command of such officer or officers as he may direct.

§ 117. May revoke the proclamation. — The governor, when he thinks proper, may revoke the proclamation authorized by section 115, or declare that it shall cease, at the time and in the manner directed by him.

PART III.

OF JUDICIAL PROCEEDINGS FOR THE REMOVAL OF PUBLIC OFFICERS, BY IMPEACHMENT, OR OTHERWISE.

TITLE I. OF IMPEACHMENTS.
II. OF THE REMOVAL OF JUSTICES OF THE PEACE, POLICE JUSTICES, AND JUSTICES OF JUSTICES' COURTS AND THEIR CLERKS.

TITLE I.

Of Impeachments.

SEC. 118. Impeachment to be delivered to president of the senate.
119. Copy of impeachment served on defendant.
120. Service, how made.
121. Proceedings, if defendant do not appear.
122. Defendant may object to sufficiency of, or deny impeachment.
123. Form of objection or denial.
124. Proceedings thereon.
125. Two-thirds necessary to conviction.
126. Judgment on conviction, how pronounced.
127. Adoption of resolution.
128. Nature of the judgment.
129. Officer, when impeached, disqualified to act until acquitted.
130. Presiding officer, when president of the senate is impeached.
131. Impeachment, not a bar to indictment.

§ 118. Articles of impeachment.—When an officer of the state is impeached by the assembly, the articles of impeachment must be delivered to the president of the senate.

§ 119. Copy to be served on defendant.—The president of the senate must thereupon cause a copy of the articles of impeachment, with a notice to appear and answer the same, at the time and place appointed for the meeting of the court, to be served on the defendant, not less than twenty days before the day fixed for the meeting of the court.

§ 120. **Service.**—The service must be upon the defendant personally, or if he cannot, upon diligent inquiry, be found in the state, the court, upon proof of that fact, may order publication to be made in such manner as it deems proper, of a notice requiring him to appear at a specified time and place, and answer the articles of impeachment.

§ 121. **Proceedings on default.**— If the defendant do not appear, the court, upon proof of service or publication as provided in the last two sections, may of its own motion, or for cause shown, assign another day or place for hearing the impeachment; or may then, or at any other time which it may appoint, proceed in the absence of the defendant, to trial and judgment.

§ 122. **Defendant's answer.** — When the defendant appears, he must answer the articles of impeachment; which he may do, either by objecting to their sufficiency, or that of any article therein, or by denying the truth of the same.

§ 123. **Form.**—If the defendant object to the sufficiency of the impeachment, the objection must be in writing, but need not be in any specific form; it being sufficient, if it present intelligibly the grounds of the objection. If he deny the truth of the impeachment, the denial may be oral, and without oath, and must be entered upon the minutes.

§ 124. **Proceedings thereon.**— If an objection to the sufficiency of the impeachment be not sustained by a majority of the members of the court who heard the argument, the defendant must forthwith answer the articles of impeachment. If he plead guilty, or refuse to plead, the court must render judgment of conviction against him. If he deny the matters charged the court must, at such time as it may appoint, proceed to try the impeachment, and may adjourn the trial from time to time until concluded.

§ 125. Two-thirds necessary to conviction.— The defendant cannot be convicted on an impeachment, without the concurrence of two-thirds of the members present during the trial; and if such two-thirds do not concur in a conviction, the defendant must be declared acquitted.

Art. 6, § 1, N. Y Const.

§ 126. Judgment how pronounced.—After conviction, the court must immediately, or at such other time as it may appoint, pronounce judgment, in the form of a resolution, entered upon the minutes of the court. The vote upon the passage thereof must be taken by yeas and nays, and must also be entered upon the minutes.

§ 127. Resolution.— On the adoption of the resolution, by a majority of the members present, who voted on the question of acquittal or conviction, it becomes the judgment of the court.

§ 128. Judgment. — Upon conviction, the judgment must be either

1. That the defendant be removed from office; or
2. That he be removed from office and disqualified to hold and enjoy a particular office or class of offices, or any office of profit, trust or honor whatever under this state.

§ 129. Impeachment disqualifies.— No officer shall exercise his office, after articles of impeachment against him shall have been delivered to the senate, until he is acquitted.

Art. 6, § 1, N. Y. Const.

§ 130. Presiding officer, when president of the senate is impeached.— If the president of the senate be impeached, notice of the impeachment must be immediately given to the senate by the assembly, that another president may be chosen.

§ 131. Impeachment no bar to indictment. — If the offense for which the defendant is impeached be a crime, the prosecution thereof is not barred by the impeachment.

Art. 6, § 1, N. Y. Const.

TITLE II.

Of the Removal of Justices of the Peace, Police Justices, and Justices of Justices' Courts, and their Clerks.

§ 132. Removals. — Justices of the peace, police justices, justices of justices' courts, and their clerks, are removable by the supreme court at a general term.

Art. 6, § 18, N. Y. Const.

PART IV.

OF THE PROCEEDINGS IN CRIMINAL ACTIONS PROSECUTED BY INDICTMENT.

TITLE I. OF THE LOCAL JURISDICTION OF PUBLIC OFFENSES.
II. OF THE TIME OF COMMENCING CRIMINAL ACTIONS.
III. OF THE INFORMATION, AND PROCEEDINGS THEREON TO THE COMMITMENT INCLUSIVE.
IV. OF THE PROCEEDINGS AFTER COMMITMENT, AND BEFORE INDICTMENT.
V. OF THE INDICTMENT.
VI. OF THE PROCEEDINGS ON THE INDICTMENT BEFORE TRIAL.
VII. OF THE TRIAL.
VIII. OF THE PROCEEDINGS AFTER TRIAL, AND BEFORE JUDGMENT.
IX. OF THE JUDGMENT AND EXECUTION.
X. GENERAL PROVISIONS RELATING TO PUNISHMENT OF CRIME.
XI. OF APPEALS.
XII. OF MISCELLANEOUS PROCEEDINGS.

TITLE I.

Of the Local Jurisdiction of Public Offenses.

SEC. 133. When a person leaves this state to elude its laws.
134. When a crime is committed partly in one county and partly in another.
135. When a crime is committed on the boundary of two or more counties, or within five hundred yards thereof.
136. Jurisdiction of crime on board of vessel.
137. Of crime committed in the state on board of any railway train, etc.
138. Indictment for libel.
139. Conviction or acquittal in another state, a bar, where the jurisdiction is concurrent.
140. Conviction or acquittal in another county, a bar, where the jurisdiction is concurrent.

§ 133. When a person leaves this state to elude its laws. — A person who leaves this state, with intent to

elude any law thereof against duelling or prize-fighting, or challenges thereto, or to do any act forbidden by such a law, or, who being a resident of this state, does an act out of it, which would be punishable as a violation of such a law, may be indicted and tried in any county of this state.

§ 134. Crime committed in different counties.—When a crime is committed, partly in one county and partly in another, or the acts or effects thereof, constituting or requisite to the consummation of the offense, occur in two or more counties, the jurisdiction is in either county.

See Peo. *v.* Mason, 9 Wend., 505. False pretenses. Peo. *v.* Sully, 1 Sheld., 17. Bigamy. King *v.* Peo., 5 Hun, 297. Burglary. Mack *v.* Peo., 82 N. Y., 235. Receiving stolen goods. Peo. *v.* Dowling, 84 N. Y., 478. Contempt. Peo. *v.* Sherwin, 17 W. D., 125.

§ 135. Crime committed on county, etc., boundary.—When a crime is committed on the boundary of two or more counties, or within five hundred yards thereof, the jurisdiction is in either county.

§ 136. Crime on board a vessel.—When a crime is committed in this state on board of a vessel navigating a river, lake, or canal, or lying therein in the course of her voyage, or in respect to any portion of the cargo or lading of such boat or vessel, the jurisdiction is in any county through which, or any part of which, such river or canal passes, or in which such lake is situated, or on which it borders, or in the county where such voyage terminates, or would terminate if completed.

See Peo. *v.* Hulse, 3 Hill, 309; Peo. *v.* Marine Ct., 6 Hun, 214.

§ 137. Crime committed on railway train, etc.—When a crime is committed in this state, in or on board of any railway engine, train or car, making a passage or trip on or over any railway in this state, or in respect to any portion of the lading or freightage of any such railway train or engine car, the jurisdiction is in any county through which, or any part of which, the railway train or car passes, or has passed in the course of the same passage or trip, or in any county where such passage or trip terminates, or would terminate if completed.

See Dowling *v.* Peo., 23 Alb. L. J., 353.

§ 138. Libel.—When a crime of libel is committed by publication in any paper in this state, against a person residing in the state, the jurisdiction is in either the county where the paper is published, or in the county where the party libeled resides. But the defendant may have the place of trial changed to the county where the libel is printed, on executing a bond to the complainant in the penal sum of not less than $250, nor more than $1,000, conditioned, in case the defendant is convicted, for the payment of the complainant's reasonable and necessary traveling expenses in going to and from his place of residence and the place of trial, and his necessary expenses in attendance thereon, which bond must be signed by two sufficient sureties, to be approved by the judge of a court of record exercising criminal jurisdiction.

Whenever the crime of libel is committed against a person not a resident of this state, the defendant must be indicted and the trial thereof had in the county where the libel is printed and published. But if the paper does not, upon its face, purport to be printed or published in a particular county of this state, the defendant may be indicted and the trial thereof had in any county where the paper is circulated. In no case however can the defendant be indicted for the printing or publication of one libel in more than one county of this state.

§ 139. Foreign conviction or acquittal a bar.—When an act charged as a crime is within the jurisdiction of another state, territory or country, as well as within the jurisdiction of this state, a conviction or acquittal thereof in the former, is a bar to a prosecution or indictment therefor in this state.

A crime may be committed, amenable to the jurisdiction of the state, without the defendant's presence therein. Peo. v. Adams, 3 Den., 190; 1 N. Y., 173.

§ 140. Conviction or acquittal in another county, a bar.—When a crime is within the jurisdiction of two or more counties of this state, a conviction or acquittal thereof in one county is a bar to a prosecution or indictment thereof in another.

TITLE II.

Of the Time of Commencing Criminal Actions.

SEC. 141. Prosecution for murder may be commenced at any time.
142. Limitation of five years.
143. Defendant out of state.
144. Indictment deemed found, when presented in court and filed.

§ 141. Prosecution for murder.—There is no limitation of time within which a prosecution for murder must be commenced. It may be commenced at any time after the death of the person killed.

Applicable to an accessory before the fact. Peo. *v.* Mather, 4 Wend., 229. Conviction for assault, etc., no bar to indictment for murder. Burns *v.* Peo., 1 Park., 182.

§ 142. Limitation. — An indictment for a crime, other than murder, must be found within five years after its commission, except where a less time is prescribed by statute.

No lapse of time legalizes a public nuisance. Peo. *v.* Cunningham, 1 Den., 524. Construction of statute. Peo. *v.* Lord, 12 Hun, 282.

§ 143. Defendant out of state. — If, when the crime is committed, the defendant be out of the state, the indictment may be found within the term herein limited after his coming within the state; and no time, during which the defendant is not an inhabitant of, or usually resident within, the state, is part of the limitation.

§ 144. When indictment deemed found. — An indictment is found, within the meaning of the last three sections, when it is duly presented by the grand jury in open court, and there received and filed.

TITLE III.

Of the Information, and Proceedings thereon to the Commitment inclusive.

CHAPTER I. The information.
II. The warrant of arrest.
III. Arrest by an officer, under a warrant.
IV. Arrest by an officer, without a warrant.
V. Arrest by a private person.
VI. Retaking, after an escape or rescue.
VII. Examination of the case, and discharge of the defendant or holding him to answer.

CHAPTER I.

THE INFORMATION.

SEC. 145. Information defined.
146. Magistrate, defined.
147. Who are magistrates.

§ **145. Information defined.** — The information is the allegation made to a magistrate, that a person has been guilty of some designated crime.

§ **146. Magistrate, defined.** — A magistrate is an officer, having power to issue a warrant for the arrest of a person charged with a crime.

§ **147. Who are magistrates.** — The following persons are magistrates:

1. The judges *of the supreme court;
2. The judges of any city court;
3. The county judges, and special county judges;
4. The city judge of the city of New York, and the judge of the court of general sessions in the city and county of New York;
5. The justices of the peace;
6. The police and other special justices, appointed or elected in a city, village or town;
7. The mayors and recorders of cities.

* So in the original.

CHAPTER II.

THE WARRANT OF ARREST.

SEC. 148. Examination of the prosecutor and his witnesses, upon the information.
149. Depositions, what to contain.
150. In what case warrant of arrest may be issued.
151. Form of the warrant.
152. Name or description of the defendant, in the warrant and statement of the offense.
153. Warrant to be directed to and executed by a peace officer.
154. Who are peace officers.
155. Warrant issued by certain judges.
156. Id.; by other magistrates.
157. Indorsement on the warrant, for service in another county, how and upon what proof to be made.
158. Defendant, arrested for felony.
159. Defendant, arrested for a misdemeanor.
160. Proceedings on taking bail from the defendant, in such case.
161. Proceedings, where he is admitted to bail in such case, but bail is not given.
162. Prisoner carried from county to county.
163. Power and privilege of officer.
164. When magistrate issuing the warrant is unable to act.
165. Defendant in all cases to be taken before a magistrate, without delay.
166. Defendant before another magistrate than the one who issued the warrant.

§ 148. Examination of the prosecutor, etc. — When an information is laid before a magistrate, of the commission of a crime, he must examine on oath the informant or prosecutor, and any witnesses he may produce, and take their depositions in writing, and cause them to be subscribed by the parties making them

Adams *v.* Peo., 63 N. Y., 621.

§ 149. Depositions, what to contain. — The depositions must set forth the facts stated by the prosecutor and his witnesses, tending to establish the commission of the crime and the guilt of the defendant.

What must be set forth. Peo. ex rel. Kingsley *v.* Pratt, 22 Hun, 300.

§ 150. When warrant of arrest may be issued.—If the magistrate be satisfied therefrom, that the crime complained of has been committed, and that there is

reasonable ground to believe that the defendant has committed it, he must issue a warrant of arrest.

What sufficient. Blodgett *v.* Race, 18 Hun, 132. Ex parte Rothaker, 11 Abb. N. C., 122; Peo. *v.* Mead, 28 Hun, 227; s. c., 92 N. Y., 415.

§ 151. Form of warrant.—A warrant of arrest is an order in writing in the name of the people, signed by a magistrate, commanding the arrest of the defendant, and may be substantially in the following form:

"County of *Albany*, [or as the case may be.]

In the name of the people of the state of New York. To any peace officer in this state [or in the county of *Albany*, or as the case may be, as provided in sections 155 and 156.]

"Information upon oath having been this day laid before me, that the crime of [designating it] has been committed, and accusing C. D. thereof.

"You are therefore commanded, forthwith to arrest the above named C. D., and bring him before me, at—[naming the place,] or in case of my absence or inability to act, before the nearest or most accessible magistrate in this county.

"Dated at the *City of Albany*, [or as the case may be,] this day of , 18 .

E. F., *Justice of the peace*,
[or as the case may be]."

§ 152. Description of defendant and the offense.—The warrant must specify the name of the defendant, or if it be unknown to the magistrate, the defendant may be designated therein by any name. It must also state an offense in respect to which the magistrate has authority to issue the warrant, and the time of issuing it, and the city, town or village where it is issued, and be signed by the magistrate with his name of office.

§ 153. Warrant, how directed and executed.—The warrant must be directed to, and executed by, a peace officer.

Warrant not directed to proper officers is void. Russell *v.* Hubbard, 6 Barb., 654.

§ 154. Who are peace officers.—A peace officer is a sheriff of a county, or his under-sheriff or deputy, or a constable, marshal, police constable or policeman of a city, town or village.

§ 155. Warrant issued by certain judges.— If the warrant be issued by a judge of the supreme court, or of the superior court, or court of common pleas, recorder, city judge or judge of a court of general sessions in the city and county of New York, or by a county judge, or by a judge of the city court, it may be directed generally to any peace officer in the state, and may be executed by any of those officers to whom it may be delivered

§ 156. Id.; by other magistrates.—If it be issued by any other magistrate, it may be directed generally to any peace officer in the county in which it is issued, and may be executed in that county; or if the defendant be in another county, it may be executed therein, upon the written direction of a magistrate of such other county indorsed upon the warrant, signed by him, with his name of office, and dated at the city, town or village where it is made, to the following effect: This warrant may be executed in the county of *Monroe*, [or as the case may be.]

§ 157. Indorsement in another county, how and when made.— The indorsement mentioned in the last section cannot, however, be made, unless upon the oath of a credible witness, in writing, indorsed on or annexed to the warrant, proving the handwriting of the magistrate by whom it was issued. Upon this proof, the magistrate indorsing the warrant is exempted from liability to a civil or criminal action, though it afterward appear that the warrant was illegally or improperly issued.

§ 158. Arrest for felony.— If the crime charged in the warrant be a felony the officer making the arrest must take the defendant before the magistrate who issued the warrant, or some other magistrate in the same county, as provided in section 164.

§ 159. Arrest for misdemeanor.—If the crime charged in the warrant be a misdemeanor, and the defendant be arrested in another county, the officer must, upon being required by the defendant, take him before a magistrate

in that county, who must admit the defendant to bail, for his appearance before the magistrate named in the warrant, and take bail from him accordingly.

§ 160. Proceedings on taking bail. — On taking bail, the magistrate must certify that fact on the warrant, and deliver the warrant and undertaking of bail to the officer having charge of the defendant. The officer must then discharge the defendant from arrest, and, without delay, deliver the warrant and undertaking to the magistrate before whom the defendant is required to appear.

§ 161. Proceedings where bail is not given. — If, on the admission of the defendant to bail, as provided in section 159, bail be not forthwith given, the officer must take the defendant before the magistrate who issued the warrant, or some other magistrate in the same county, as provided in section 164.

§ 162. Prisoner carried from county to county. — An officer who has arrested a defendant on a criminal charge, in any county, may carry such prisoner through such parts of any county or counties, as shall be in the ordinary route of travel from the place where the prisoner shall have been arrested, to the place where he is to be conveyed and delivered under the process, by which the arrest shall have been made; and such conveyance shall not be deemed an escape.

§ 163. Power and privilege of officer. — While passing through such other county or counties the officers having the prisoner in their charge shall not be liable to arrest on civil process; and they shall have the like power to require any citizen to aid in securing such prisoner, and to retake him if he escapes, as if they were in their own county; and a refusal or neglect to render such aid shall be an offense, in the same manner, as if they were officers of the county where such aid shall be required.

§ 164. When magistrate issuing the warrant is unable to act. — When, by the preceding sections of this chapter, the defendant is required to be taken before the magistrate who issued the warrant, he may, if that magistrate be absent or unable to act, be taken before the nearest or most accessible magistrate in the same county. The officer must, at the same time, deliver to

the magistrate the warrant with his return indorsed and subscribed by him.

§ 165. Defendant in all cases to be taken before a magistrate without delay.—The defendant must in all cases be taken before the magistrate without unnecessary delay, and he may give bail at any hour of the day or night. In each of the cities of New York or Brooklyn a police justice to be designated from time to time by the mayors of those cities, respectively, must be in attendance at the police head-quarters of the city from four o'clock in the afternoon of each day to ten o'clock the next morning to take bail in proper cases, if bail be offered.

Cannot commit defendant for future hearing until he is brought before court. Pratt *v.* Hill, 16 Barb., 303.

§ 166. Magistrate other than the one who issued warrant.—If the defendant be taken before a magistrate other than the one who issued the warrant, the depositions on which the warrant was granted must be sent to that magistrate, or if they cannot be procured, the prosecutor and his witnesses must be summoned to give their testimony anew.

CHAPTER III.

ARREST BY AN OFFICER, UNDER A WARRANT.

SEC. 167. Arrest, defined.
168. By whom an arrest may be made.
169. Every person bound to aid an officer in an arrest.
170. When the arrest may be made.
171. How an arrest is made.
172. No further restraint allowed, than is necessary.
173. Officer must state his authority, and show warrant, if required.
174. If defendant flee or resist, officer may use all necessary means to effect arrest.
175, 176. When officer may break open a door or window.

§ 167. Arrest defined.—Arrest is the taking of a person into custody that he may be held to answer for a crime.

Illegal arrest. Peo. *v.* Rowe, 1 Sheld., 581.

§ 168. Who may arrest.—An arrest may be,

1. By a peace officer, under a warrant;
2. By a peace officer, without a warrant; or
3. By a private person.

§ 169. Every person bound to aid. — Every person must aid an officer in the execution of a warrant, if the officer require his aid and be present and acting in its execution.

§ 170. When arrest may be made. — If the crime charged be a felony, the arrest may be made on any day, and at any time of the day or during any night. If it be a misdemeanor, the arrest cannot be made on Sunday, or at night, unless by direction of the magistrate indorsed upon the warrant.

§ 171. How arrest made. — An arrest is made by an actual restraint of the person of the defendant, or by his submission to the custody of the officer.

§ 172. No further restraint than necessary. — The defendant is not to be subjected to any more restraint than is necessary for his arrest and detention.

§ 173. Officer to state authority, and show warrant. — The defendant must be informed by the officer that he acts under the authority of the warrant, and he must also show the warrant, if required.

§ 174. If defendant resist, officer may use necessary means to arrest. — If, after notice of intention to arrest the defendant, he either flee or forcibly resist, the officer may use all necessary means to effect the arrest.

Conraddy *v* Peo., 5 Park., 234.

§ 175. When officer may break open a door or window. — The officer may break open an outer or inner door or window of any building, to execute the warrant, if, after notice of his authority and purpose, he be refused admittance.

§ 176. Id. — An officer may break open an outer or inner door or window of any building, for the purpose of liberating a person, who, having entered for the purpose of making an arrest, is detained therein, or when necessary for his own liberation.

CHAPTER IV.

ARREST BY AN OFFICER, WITHOUT A WARRANT.

SEC. 177. In what cases allowed.
178. May break open a door or window, if admittance refused.
179. May arrest at night, on reasonable suspicion of felony.
180. Must state his authority, and cause of arrest, except where party is committing felony or is pursued after escape.
181. May take before a magistrate, a person arrested by a by-stander for breach of the peace.
182. Magistrate may commit by verbal or written order, for offenses committed in his presence.

§ 177. When arrest allowed. — A peace officer may, without a warrant, arrest a person,

1. For a crime, committed or attempted in his presence;

2. When the person arrested has committed a felony, although not in his presence;

3. When a felony has in fact been committed, and he has reasonable cause for believing the person to be arrested to have committed it.

See Peo. ex rel. Kingsley *v.* Pratt, 22 Hun, 300; Burns *v.* Erben, 40 N. Y., 463; Schneider *v.* McLane, 3 Keyes, 568; Harft *v.* McDonald, 1 C. C. R., 181; Meyer *v.* Clark, 9 J. & Sp., 107; Stemack *v.* Brooks, 7 Daly, 142; Peo. *v.* Pratt, 22 Hun, 300; McIntyre *v.* Radmus, 14 J. & Sp., 123.

§ 178. May break in, if admittance refused. — To make an arrest, as provided in the last section, the officer may break open an outer or inner door or window of a building, if, after notice of his office and purpose, he be refused admittance.

§ 179. When may arrest at night. — He may also, at night, without a warrant, arrest any person whom he has reasonable cause for believing to have committed a felony, and is justified in making the arrest, though it afterward appear that a felony had been committed, but that the person arrested did not commit it.

§ 180. To state authority, and cause, except in case of felony or pursuit. — When arresting a person without a warrant the officer must inform him of the authority

of the officer and the cause of the arrest, except when the person arrested is in the actual commission of a crime, or is pursued immediately after an escape.

§ 181. May take a person arrested by a by-stander for breach of the peace.— A peace officer may take before a magistrate, a person, who, being engaged in a breach of the peace, is arrested by a by-stander and delivered to him.

Wark's Case, 5 C. H. Rec., 4.

§ 182. Offenses committed in magistrate's presence.— When a crime is committed in the presence of a magistrate, he may, by a verbal or written order, command any person to arrest the offender, and may thereupon proceed as if the offender had been brought before him on a warrant of arrest.

Order cannot be delayed. McKay's case, 5 C. H. Rec., 95. See Butolph *v.* Blust, 5 Lans., 84; Sands *v.* Benedict, 2 Hun, 479; Lindsay *v.* Peo., 67 Barb., 548.

CHAPTER V.

ARREST BY A PRIVATE PERSON.

SEC. 183. In what cases allowed.
184. Must inform the party of the cause of arrest, except when actually committing the offense or on pursuit after escape.
185. Must immediately take prisoner before a magistrate, or deliver him to a peace officer.

§ 183. When arrest allowed.— A private person may arrest another,

1. For a crime, committed or attempted in his presence;
2. When the person arrested has committed a felony, although not in his presence.

Phillips *v.* Trull, 11 Johns., 486.

§ 184. Must inform party of the cause of arrest, except when actually committing offense or on pursuit.— A private person before making an arrest, must inform the person to be arrested of the cause thereof, and

require him to submit, except when he is in the actual commission of the crime, or when he is arrested on pursuit immediately after its commission.

§ 185. Must immediately take prisoner before a magistrate, or deliver him to a peace officer.— A private person, who has arrested another for the commission of a crime, must, without unnecessary delay, take him before a magistrate, or deliver him to a peace officer.

CHAPTER VI.

RETAKING, AFTER AN ESCAPE OR RESCUE.

SEC. 186. May be at any time, or in any place in the state.
187. May break open a door or window, if admittance refused.

§ 186. May be at any time, or in any place in the state.— If a person arrested escape or be rescued, the person, from whose custody he escaped or was rescued, may immediately pursue and retake him, at any time, and in any place in the state.

§ 187. May break in, if admittance refused.— To retake the person escaping or rescued, the person pursuing may, after notice of his intention and refusal of admittance, break open an outer or inner door or window of a building.

CHAPTER VII.

EXAMINATION OF THE CASE, AND DISCHARGE OF THE DEFENDANT OR HOLDING HIM TO ANSWER.

SEC. 188. Magistrate to inform defendant of the charge, and his right to counsel.
189. Time to send, and sending for counsel.
190. On appearance of counsel, or waiting for him a reasonable time examination to proceed.
191. When to be completed; adjournment.
192. On adjournment, defendant to be committed, or discharged on deposit of money.
193. Form of commitment.
194. Depositions, to be read on examination, and witnesses examined.

SEC. 195. Examination of witnesses to be in presence of defendant, and witnesses to be cross-examined in his behalf.
196. Defendant to be informed of his right to make a statement
197. Waiver of his right, and its effect.
198, 199. Statement, how taken.
200. How reduced to writing, and authenticated.
201. After statement or waiver, defendant's witnesses to be examined.
202. Witnesses to be kept apart
203. Who may be present at examination.
204. Testimony, how taken and authenticated.
205. Depositions and statement, how and by whom kept.
206. Defendant entitled to copies of depositions and statement
207. Defendant, when and how to be discharged.
208. When and how to be committed.
209. Order for commitment.
210. Certificate of bail being taken.
211. Defendant to choose how he shall be tried.
212. Order for bail, on commitment.
213, 214. Form of commitment.
215. Undertaking of witnesses to appear, when and how taken.
216. Security for appearance of witnesses, when and how required.
217. Infants and married women may be required to give security for appearance as witnesses.
218. Witness to be committed, on refusal to give security for appearance.
219. Witness, unable to give security, may be conditionally examined.
220. Last section not applicable to prosecutor or accomplice.
221. Magistrate to return depositions, statement and undertakings of witnesses to the court.

§ 188. Magistrate to inform defendant of the charge, and his right to counsel. — When the defendant is brought before a magistrate upon an arrest either with or without warrant on a charge of having committed a crime, the magistrate must immediately inform him of the charge against him, and of his right to the aid of counsel in every stage of the proceedings, and before any further proceedings are had.

Hearing after coroner's inquisition. Ex parte Ramscar, 1 N. Y. Cr., 33.

§ 189. Time to send, and sending for counsel. — He must also allow the defendant a reasonable time to send for counsel, and adjourn the examination for that purpose; and must, upon the request of the defendant, require a peace officer to take a message to such counsel

in the town or city, as the defendant may name. The officer must, without delay and without fee, perform that duty.
Peo. v. Restell, 3 Hill, 289.

§ 190. On appearance of counsel, or waiting for him a reasonable time, examination to proceed.—The magistrate, immediately after the appearance of counsel, or if none appear and the defendant require the aid of counsel, must, after waiting a reasonable time therefor, proceed to examine the case, unless the defendant waives examination and elects to give bail, in which case the magistrate must admit the defendant to bail if the crime is bailable, as provided in section two hundred and ten; and in that case witnesses in attendance or shown to be material for the people may be required to appear and testify, or to be examined conditionally as prescribed in sections two hundred and fifteen, two hundred and sixteen, two hundred and seventeen, two hundred and eighteen, two hundred and nineteen and two hundred and twenty.

§ 191. When to be completed—Adjournment.—The examination must be completed at one session, unless the magistrate, for good cause shown, adjourn it. The adjournment cannot be for more than two days at each time, unless, by consent or on motion of the defendant.

Cannot commit defendant for hearing on future day until brought before court. Pratt v. Hill, 16 Barb., 303. Indictment does not oust jurisdiction. Ex parte Gessner, 53 How. Pr., 515. May indict pending examination. Peo. v. Westbrook, 12 Hun, 646; Peo. v. Drury, 2 Edm. S. C., 351.

§ 192. On adjournment, to be committed or discharged on bail.—If an adjournment be had for any cause, the magistrate must commit the defendant for examination, or discharge him from custody, upon his giving bail to appear during the examination, or upon the deposit of money as provided in this Code, to make sure of his appearance at the time to which the examination is adjourned.

§ 193. Form of commitment.—The commitment for examination is by an indorsement signed by the magistrate, on the warrant of arrest, to the following effect: "The within named A. B., having been brought before me under this warrant, is committed for examination, to the sheriff of the county of ," or in the city and county of New York, "to the keeper of the city prison of the city of New York."

§ 194. Depositions to be read and witnesses examined.—At the examination, the magistrate must, in the first place, read to the defendant the depositions of the witnesses examined on the taking of the information, and if the defendant request it, or elects to have the examination, must summon for cross-examination the witnesses so examined, if they be in the county. He must also issue subpœnas for additional witnesses required by the prosecutor or the defendant.

§ 195. Witnesses to be in presence of defendant, and to be cross-examined.—The witnesses must be examined in the presence of the defendant, and may be cross-examined in his behalf.

§ 196. Defendant to be informed of his right to make a statement.—When the examination of the witnesses on the part of the people is closed, the magistrate must inform the defendant, that it is his right to make a statement in relation to the charge against him (stating to him the nature thereof); that the statement is designed to enable him, if he see fit, to answer the charge and to explain the facts alleged against him; that he is at liberty to waive making a statement; and that his waiver cannot be used against him on the trial.

§ 197. Waiver of his right and its effect.—If the defendant waive his right to make a statement, the magistrate must make a note thereof, immediately following the depositions of the witnesses against the defendant.

§ 198. Statement, how taken.—If the defendant choose to make a statement, the magistrate must proceed to take it in writing, without oath, and must put to the defendant the following questions only:

What is your name and age?

Where were you born?

Where do you reside, and how long have you resided there?

What is your business or profession?

Give any explanation you may think proper, of the

circumstances appearing in the testimony against you, and state any facts which you think will tend to your exculpation.

§ 199. Reading answers. — The answer of the defendant to each of the questions must be distinctly read to him as it is taken down. He may thereupon correct or add to his answer, and it must be corrected until it is made conformable to what he declares to be the truth.

§ 200. To be written and authenticated. — The statement must be reduced to writing by the magistrate, or under his direction, and authenticated in the following manner:

1. The authentication must set forth in detail, that the defendant was informed of his rights as provided in section 196, and that after being so informed, he made the statement;
2. It must contain the questions put to him, and his answers thereto, as provided in sections 198 and 199;
3. It may be signed by the defendant, or he may refuse to sign it; but if he refuse to sign, his reason therefor must be stated as he gives it;
4. It must be signed and certified by the magistrate.

Peo. *v.* Restell, 3 Hill, 289.

§ 201. After statement or waiver. — After the waiver of the defendant to make a statement, or after he has made it, his witnesses, if he produce any, must be sworn and examined.

§ 202. Witnesses to be kept apart. — The witnesses produced on the part either of the people or of the defendant cannot be present at the examination of the defendant; and while a witness is under examination, the magistrate may exclude all witnesses who have not been examined. He may also cause the witnesses to be kept separate, and to be prevented from conversing with each other, until they are all examined.

§ 203. Who may be present at examination. — The magistrate must also, upon the request of the defendant,

exclude from the examination every person, except the clerk of the magistrate, the prosecutor and his counsel, the attorney-general, the district attorney of the county, the defendant and his counsel, and the officer having the defendant in custody.

§ 204. Testimony, how taken and authenticated.— The testimony given by each witness must be reduced to writing, as a deposition, by the magistrate or under his direction, and authenticated in the following manner:

1. The authentication must state the name and age of the witness, his place of residence, and his business or profession.

2. It must, unless deposition by question and answer be waived by the defendant and the witness, contain the questions put to the witness, and his answers thereto; each answer being distinctly read to him as it is taken down, and being corrected or added to, until it is made conformable to what he declares to be the truth.

3. If a question put be objected to on either side, and overruled, or the witness decline answering it, that fact, with the ground on which the question was overruled or the answer declined, must be stated.

4. The deposition must be signed by the witness, or if he refuse to sign it, his reason for refusing must be stated in writing as he gives it.

5. It must be signed and certified by the magistrate.

§ 205. Depositions, how kept.—The magistrate or his clerk must keep the depositions taken on the information or on the examination, and the statement of the defendant, if any, until they are returned to the proper court; and must not permit them to be inspected by any person, except a judge of a court having jurisdiction of the offense, the attorney-general, the district attorney of the county, and the defendant and his counsel.

§ 206. Defendant entitled to copies.—If the defendant be held to answer the charge, the magistrate or his clerk having the custody of the depositions taken on the information or examination, and of the statement of the defendant, must, on payment of his fees at the rate of five cents for every hundred words, and within two days

after demand, furnish to the defendant, or his counsel, a copy of the depositions and statement, or permit either of them to take a copy.

§ 207. **Defendant's discharge.**—After hearing the proofs, and the statement of the defendant, if he have made one, if it appear, either that a crime has not been committed, or that there is no sufficient cause to believe the defendant guilty thereof, the magistrate must order the defendant to be discharged, by an indorsement on the depositions and statement, signed by him, to the following effect: "There being no sufficient cause to believe the within named A. B. guilty of the offense within mentioned, I order him to be discharged."

§ 208. **Commitment.**—If, however, it appear from the examination that a crime has been committed and that there is sufficient cause to believe the defendant guilty thereof, the magistrate must, in like manner, indorse on the depositions and statement, an order, signed by him, to the following effect: "It appearing to me by the within depositions (and statement, if any) that the crime therein mentioned [or any other crime according to the fact, stating generally the nature thereof] has been committed, and that there is sufficient cause to believe the within named A. B. guilty thereof, I order that he be held to answer the same."

May amend commitment. ***Ex parte*** **Hogan, 55 How. Pr., 458.**

§ 209. **Order for commitment.**—If the crime be not bailable, the following words, or words to the same effect, must be added to the indorsement: "and that he be committed to the sheriff of the county of ," [or in the city and county of New York, "to the keeper of the city prison of the city of New York."]

§ 210. **Certificate of bail.**—If the crime be bailable, and bail be taken by the magistrate, the following words, or words to the same effect, must be added to the indorsement mentioned in section 208; "and I have admitted him to bail to answer, by the undertaking hereto annexed."

§ 211. Defendant to choose how he shall be tried.—If the crime with which the defendant is charged be one triable, as hereinbefore provided, by a court of special sessions of the county in which the same was committed, the magistrate, before holding the defendant to answer, must inform him of his right to be tried by a jury after indictment, and must ask him how he will be tried. If the defendant shall require to be tried by a jury after indictment, he can only be held to answer to a court having authority to inquire by the intervention of a grand jury into offenses triable in the county. If he shall not so require, he may be held to answer at the court of special sessions.

Election when and how made. Peo. *v.* Lied, 19 Alb. L. J., 400. Waiver of jury trial must appear on face of record. Peo. *v.* Mallon, 39 How. Pr., 454. Waiver cannot be recalled. Peo. *v.* Riley, 5 Park., 401.

§ 212. Order for bail on commitment.—If the crime be bailable and the defendant be admitted to bail, but bail have not been taken, the following words, or words to the same effect, must be added to the indorsement mentioned in section 208, "and that he be admitted to bail in the sum of dollars, and be committed to the sheriff of the county of ," [or in the city and county of New York, "to the keeper of the city prison of the city of New York,"] until he give such bail."

§ 213. Commitment.—If the magistrate order the defendant to be committed as provided in sections 209 and 212, he must make out a commitment, signed by him, with his name of office, and deliver it, with the defendant, to the officer to whom he is committed, or if that officer be not present, to a peace officer, who must immediately deliver the defendant into the proper custody, together with the commitment.

§ 214. Form.—The commitment must be to the following effect:

"County of *Albany* [or as the case may be.]

"In the name of the people of the State of New York:

"To the sheriff of the county of Albany," [or in the city

and county of New York, "to the keeper of the city prison of the city of New York:"]

"An order having been this day made by me, that A. B. be held to answer to the court of upon a charge of [stating briefly the nature of the crime,] you are commanded to receive him into your custody and detain him, until he be legally discharged.

Dated at *the city of Albany*, [or as the case may be,] this day of , 18 .

C. D., *Justice of the Peace*,
[or as the case may be.]

It may be amended. *Ex parte* Hogan, 55 How. Pr., 458.

§ 215. Undertaking of witnesses to appear.—On holding the defendant to answer, the magistrate may take from each of the material witnesses examined before him on the part of the people, a written undertaking, to the effect that he will appear and testify at the court to which the depositions and statement are to be sent, or that he will forfeit the sum of one hundred dollars.

§ 216. Security for appearance of witnesses.—When the magistrate is satisfied, by proof on oath, that there is reason to believe that any such witness *is an accomplice in the commission of the crime charged*, he may order the witness to enter into a written undertaking, with such sureties, and in such sum as he may deem proper, for his appearance as specified in the last section. [Am'd ch. 416 of 1883.]

1 Park. Cr., 567; 3 id., 465; 5 Bar., 514.

§ 217. [Repealed ch. 416 of 1883.]

§ 218. Witness to be committed on refusal.—If a witness, required to enter into an undertaking to appear and testify, either with or without sureties, refuse compliance with the order for that purpose, the magistrate must commit him to prison until he comply or be legally discharged.

§ 219. Witness unable to give security, may be conditionally examined.—A witness may be conditionally examined, on behalf of the people, in the manner and with the effect provided in this Code. [Am'd ch. 416 of 1883.]

See §§ 620–635, *post.*

§ 220. [Repealed ch. 416 of 1883.]

§ 221.—Magistrate to return depositions, etc.—When a magistrate has discharged a defendant, or has held him to answer, as provided in sections 207 and 208, he must return to the next court of oyer and terminer or court of sessions of the county, or city court having power to inquire into the offense by the intervention of a grand jury, at or before its opening on the first day, the warrant, if any, the depositions, the statement of the defendant, if he have made one, and all undertakings of bail, or for the appearance of witnesses, taken by him.

TITLE IV.

Of Proceedings after Commitment, and before Indictment.

CHAPTER I. Preliminary provisions.
II. Formation of the grand jury; its powers and duties.

CHAPTER I.

PELIMINARY PROVISIONS.

SEC. 222. Crimes; how prosecuted.

§ 222. Crimes; how prosecuted.—All crimes prosecuted in a court of oyer and terminer, or in a court of sessions, or in a city court, must be prosecuted by indictment.

CHAPTER II.

FORMATION OF THE GRAND JURY, ITS POWERS AND DUTIES.

SEC. 223, 224. Grand jury defined.
225, 226, 227. For what courts to be drawn; the order.
228. Misdescription in order.
229. Mode of selecting grand jurors.
230. If sixteen grand jurors do not appear, additional number to be ordered.
231, 232, 233. Manner of designating the additional grand jurors.
234. Summoning the additional grand jurors, and compelling their attendance.
235. When new grand jury may be summoned for the same court.
236. Grand jury, how drawn when more than a sufficient number attends.
237. Who may challenge an individual grand juror.
238. Causes of discharge of the panel.
239. Causes of challenge to an individual grand juror.
240. Manner of taking and trying the challenges.
241. Decision upon the challenge.
242. Effect of allowing a challenge to an individual grand juror.
243. Violation of last section.
244. Appointment of foreman.
245, 246, 247. Oath of the foreman and the other grand jurors.
248. Charge of the court.
249. Retirement of the grand jury.
250. Appointment of a clerk, and his duties.
251. Discharge of the grand jury.
252. Power of grand jury to inquire into crimes, etc.
253. Foreman may administer oaths.
254. Definition of an indictment.
255. Evidence receivable before the grand jury.
256. Same.
257. Grand jury not bound to hear evidence for the defendant, but may order explanatory evidence to be produced.
258. Degree of evidence, to warrant an indictment.
259. Grand jurors must declare their knowledge as to commission of a crime.
260. Grand jury must inquire as to persons imprisoned on criminal charges and not indicted; the condition of public prisons; and the misconduct of public officers.
261. Grand jury entitled to access to public prisons, and to examine public records.
262, 263, 264. When and from whom they may ask advice, and who may be present during their sessions.
265. Secrets of the grand jury to be kept.
266. Grand jury, when bound to disclose the testimony of a witness.
267. Grand juror not to be questioned for his conduct as such.

§ 223. **Grand jury defined.**—A grand jury is a body of men, returned at stated periods from the citizens of the county, before a court of competent jurisdiction, and chosen by lot, and sworn to inquire of crimes committed or triable in the county.

§ 224. **Id.**—The grand jury must consist of not less than sixteen and not more than twenty-three persons, and the presence of at least sixteen is necessary for the transaction of any business.

Peo. v. King, 2 Cal., 98.

§ 225. **For what courts to be drawn.**—A grand jury must be drawn for every term of the following courts:

1. The court of oyer and terminer, except in the city and county of New York, and the county of Kings, and except for extraordinary or adjourned terms.
2. The court of general sessions of the city and county of New York and the court of sessions of the county of Kings; and
3. The city courts whenever an indictment can be there found.

§ 226. **Id.**—A grand jury may also be drawn:

1. For every other court of sessions, when specially ordered by the court, or by the board of supervisors.
2. For the court of oyer and terminer in the city and county of New York, upon the order of a judge of the supreme court elected in the first judicial district.
3. For the court of oyer and terminer, of the county of Kings, upon the order of a judge of the supreme court elected in the second judicial district.

§ 227. **Order how filed.**—If made by the court or a judge thereof, the order for a grand jury must be entered upon its minutes, and a copy thereof filed with the county clerk, at least twenty days before the term for which the jury is ordered. If made by the board of supervisors a copy thereof, certified by the clerk of the board, must be filed with the county clerk, at least twenty days before the term; and when so filed, is conclusive evidence of the authority for drawing the jury.

§ 228. **Misdescription.**—A misdescription of the title of the court in an order for a grand jury does not affect the validity of the order, if it can be plainly understood therefrom what court is intended.

§ 229. Selection of grand jurors. — The mode of selecting grand jurors is prescribed by special statutes.

See Code Civ. Proc., §§ 2293–2301, 3314, 3351; 3 Rev. St. (6th ed.), pp. 1015–1019.

§ 230. If sixteen jurors do not appear, others to be ordered. — If at any court of oyer and terminer or court of sessions, except in the counties of Genesee, Orleans, and St. Lawrence, there shall not appear at least sixteen persons, duly qualified to serve as grand jurors, who have been summoned, or if the number of grand jurors attending shall be reduced below sixteen, such court must, by order to be entered in its minutes, require the clerk of the county to draw, and the sheriff to summon, such additional number of grand jurors as shall be necessary, and must specify the number required in the order.

§ 231. Designation of additional jurors. — The clerk of the county must forthwith bring into the court the box containing the names of the grand jurors, from which grand jurors in the county are required to be drawn; and he must, in the presence of the court, proceed publicly to draw the number of grand jurors specified in the order; and when such drawing is completed, he must make two lists of the persons so drawn, each of which must be certified by him to be a correct list of the names of the persons so drawn by him, one of which he must file in his office, and the other he must deliver to the sheriff.

§ 232. Summoning jurors. — The sheriff must accordingly, in the manner required in respect to the grand jurors originally drawn, forthwith summon the persons whose names are drawn or designated in the list, provided in section 231, to appear in the court requiring their attendance at the time designated, and they must attend and serve as if they had been originally summoned as grand jurors, and subject to the same penalties, unless excused or discharged by the court.

§ 233. Court may order drawn or appoint.—In the counties of Genesee, Orleans and St. Lawrence, the names

of the persons required to complete the grand jury may, in the discretion of the court, be drawn as provided in the last section, or may be publicly designated by the court, from the by-standers or the body of the county.

§ 234. Summoning the additional grand jurors. — The sheriff must accordingly, in the manner required in respect to the grand jurors originally drawn, forthwith summon the persons whose names are drawn or designated, as provided in the last two sections, who must attend and serve as if they had been originally summoned as grand jurors, and are subject to the same penalties, unless excused or discharged by the court.

§ 235. When new grand jury may be summoned for the same court. — If a crime be committed during the sitting of the court, after the discharge of the grand jury, the court may, in its discretion, direct an order to be entered, that the sheriff summon another grand jury; and the same shall be summoned, in the manner prescribed for grand juries in general.

§ 236. When more than a sufficient number attends. — When more than twenty-three persons summoned as grand jurors attend for service, the clerk must prepare separate ballots containing their names, folded as nearly alike as possible, and so that the names cannot be seen, and must deposit them in a box. He must then openly draw out of the box twenty-three ballots; and the persons whose names are drawn constitute the grand jury. The names remaining in the box, as well as those drawn, must be returned to the box of drawn grand jurors.

Error to swear twenty-four grand jurors. Peo. *v.* King, 2 Cal., 98. When objection to be taken. Conkey *v.* Peo., 1 Abb. Dec., 418.

§ 237. Who may challenge grand juror. — A person held to answer a charge for a crime may challenge an individual grand juror.

§ 238. Causes of discharge of the panel. — There is no challenge allowed to the panel or to the array of the

grand jury, but the court may, in its discretion, at any time discharge the panel and order another to be summoned, for one or more of the following causes:

1. That the requisite number of ballots was not drawn from the grand jury box of the county;
2. That notice of the drawing of the grand jury was not given;
3. That the drawing was not had, in the presence of the officers designated by law; and
4. That the drawing was not had, at least fourteen days before the court.

§ 239. Causes of challenge to a grand juror. — A challenge to an individual grand juror may be interposed, for one or more of the following causes, and for these only:

1. That he is a minor;
2. That he is an alien;
3. That he is insane;
4. That he is the prosecutor upon a charge against the defendant;
5. That he is a witness on the part of the prosecution, and has been served with process or bound by an undertaking, as such;
6. That a state of mind exists on his part, in reference to the case or to either party, which satisfies the court, in the exercise of a sound discretion, that he cannot act impartially and without prejudice to the substantial rights of the party challenging.

Dawson *v.* Peo., 25 N. Y., 405; Peo. *v.* Jewett, 3 Wend., 314; 6 id., 386.

§ 240. Taking and trying challenges.—Challenges, to individual grand jurors, may be oral, and must be entered upon the minutes, and tried by the court, in the same manner as challenges, in the case of a trial jury.

§ 241. Decision of challenge.—The court must allow or disallow the challenge, and the clerk must enter its decision upon the minutes.

§ 242. Effect of allowing challenge to a grand juror.—If a challenge to an individual grand juror be allowed

for any of the causes mentioned in subdivisions one, two or three of section 239, he must be forthwith discharged from the grand jury. If such challenge be allowed for any of the causes mentioned in subdivisions four, five or six of section 239, the juror challenged cannot be present at or take part in the consideration of the charge against the defendant who interposed the challenge, or in the deliberations of the grand jury thereon.

§ 243. Violation of last section. — The grand jury must inform the court of a violation of the last section, and the same is punishable by the court as a contempt.

§ 244. Appointment of foreman. — From the persons summoned to serve as grand jurors, and appearing, the court must appoint a foreman. The court must also appoint a foreman, when a person already appointed is discharged or excused, before the grand jury are dismissed.

§ 245. Oath of the foreman.—The following oath must be administered to the foreman of the grand jury: "You, as foreman of this grand jury, shall diligently inquire and true presentment make, of all such matters and things as shall be given you in charge; the counsel of the people of this state, your fellows' and your own you shall keep secret; you shall present no person from envy, hatred or malice; nor shall you leave any one unpresented through fear, favor, affection or reward, or hope thereof; but you shall present all things truly as they come to your knowledge, according to the best of your understanding. So help you God!"

§ 246. Id.; to jurors. — The following oath must be immediately thereupon administered to the other grand jurors present: "The same oath which your foreman has now taken before you on his part, you and each of you shall well and truly observe on your part. So help you God!"

§ 247. Id. — If, after the foreman and the grand jurors then present are sworn, any other grand juror appear,

and be admitted as such, the oath, as prescribed in section 245, must be administered to him, commencing, "You, as one of this grand jury," and so on, to the end.

§ 248. Charge of the court. — The grand jury being impaneled and sworn, must be charged by the court. In doing so, the court must read to them the provisions of this Code, from section 252 to section 267, both inclusive, or give them a copy thereof, and must give them such information as it may deem proper, as to the nature of their duties, and any charges and crimes returned to the court, or likely to come before the grand jury. The court need not, however, charge them respecting violations of a particular statute.

§ 249. Retirement of the grand jury. — The grand jury must then retire to a private room and inquire into the offenses cognizable by them.

§ 250. Appointment of a clerk, and his duties. — The grand jury must appoint one of their number as clerk, who is to preserve minutes of their proceedings (except of the votes of the individual members on a presentment or indictment), and of the evidence given before them.

§ 251. Discharge of the grand jury. — The grand jury, on the completion of the business before them, must be discharged by the court; but whether the business be completed or not, they are discharged by the final adjournment of the court.

§ 252. Power of grand jury. — The grand jury has power, and it is their duty, to inquire into all crimes committed or triable in the county, and to present them to the court.

§ 253. Foreman may administer oaths. — The foreman may administer an oath, to any witness appearing before the grand jury.

§ 254. Definition of an indictment.—An indictment is an accusation in writing, presented by a grand jury to a competent court, charging a person with a crime.

§ 255. Evidence before the grand jury.—In the investigation of a charge, for the purpose of indictment, the grand jury can receive no other evidence than,

1. Such as is given by witnesses produced and sworn before them, or furnished by legal documentary evidence; or

2. The deposition of a witness, in the cases mentioned in the third subdivision of section 8.

§ 256. Legal evidence only.—The grand jury can receive none but legal evidence.

§ 257. Evidence grand jury may hear or order.—The grand jury is not bound to hear evidence for the defendant; but it is their duty to weigh all the evidence submitted to them, and when they have reason to believe that other evidence, within their reach, will explain away the charge, they should order such evidence to be produced; and for that purpose, may require the district attorney to issue process for the witnesses.

Hope *v.* Peo., 83 N. Y., 418.

§ 258. Degree of evidence, to warrant an indictment.—The grand jury ought to find an indictment, when all the evidence before them, taken together, is such as in their judgment would, if unexplained or uncontradicted, warrant a conviction by the trial jury.

What evidence sufficient. Peo. *v.* Hyler, 2 Park., 570.

§ 259. Grand jurors must declare their knowledge as to commission of a crime.—If a member of the grand jury know, or have reason to believe, that a crime has been committed, which is triable in the county, he must declare the same to his fellow jurors, who must thereupon investigate the same.

§ 260. Special inquiries by grand jury.—The grand jury must inquire,

1. Into the case of every person imprisoned in the jail of the county, on a criminal charge, and not indicted;
2. Into the condition and management of the public prisons in the county; and
3. Into the willful and corrupt misconduct in office, of public officers of every description, in the county.

§ 261. Grand jury entitled to access to public prisons, public records.—They are also entitled to free access, at all reasonable times, to the public prisons, and to the examination, without charge, of all public records in the county.

§ 262. When and from whom they may ask advice.—The grand jury may in any case ask the advice of any judge of the court, or of the district attorney of the county.

§ 263. Duty of district attorney.—Whenever required by the grand jury, it shall be the duty of the district attorney of the county to attend them for the purpose of examining witnesses in their presence, or of giving them advice upon any legal matter, and of issuing subpœnas or other process for witnesses.

§ 264. Who may be present during sessions.—The district attorney of the county must be allowed at all times to appear before the grand jury, at his request, for the purpose of giving information relative to any matter before them, but no district attorney, officer, or other person, shall be present with the grand jury during the expression of their opinions, or the giving of their votes upon any matter.

§ 265. Secrets of the grand jury to be kept.— Every member of the grand jury must keep secret whatever he himself, or any other grand juror, may have said, or in what manner he, or any other grand juror, may have voted, on a matter before them.

§ 266. Grand jury, when bound to disclose the testimony of a witness.— A member of the grand jury may, however, be required by any court, to disclose the testimony of a witness examined before the grand jury, for the purpose of ascertaining whether it is consistent with that given by the witness before the court; or to disclose the testimony given before them by any person upon a charge against him for perjury in giving his testimony, or upon his trial therefor.

Peo. *v.* Hulbut, 4 Denio, 133.

§ 267. Grand juror not to be questioned for his conduct.— A grand juror cannot be questioned for anything he may say, or any vote he may give, in the grand jury relative to a matter legally pending before the jury, except for a perjury of which he may have been guilty, in making an accusation or giving testimony to his fellow jurors.

Reflections on jurors will be punished as contempt. *Ex. p.* Van Hook, 3 C. H. Rec., 64; *Ex. p.* Spooner, 5 id., 109.

TITLE V.

Of the Indictment.

CHAPTER I. Finding and presentation of the indictment.
II. Form of the indictment.
III. Amendment of the indictment.
IV. Arraignment of the defendant.
V. Setting aside the indictment.
VI. Demurrer.
VII. Plea.
VIII. Removal of the action before trial.

CHAPTER I.

FINDING AND PRESENTATION OF THE INDICTMENT.

SEC. 268. Indictment must be found by twelve grand jurors, and indorsed by foreman.
269. If not so found, depositions, etc., must be returned to the court, with dismissal indorsed.
270. Effect of dismissal.
271. Names of witnesses must be indorsed upon indictment.
272. Indictment must be presented in presence of the grand jury, and filed.

§ 268. Indictment must be found by twelve jurors, and indorsed by foreman.— An indictment cannot be

found, without the concurrence of at least twelve grand jurors. When so found, it must be indorsed, "A true bill," and the indorsement must be signed by the foreman of the grand jury.

Indorsement no part of indictment. Brotherton *v.* Peo., 75 N. Y., 159.

§ 269. If not so found, depositions, etc., must be returned to the court, with dismissal indorsed.—If twelve grand jurors do not concur in finding an indictment, the depositions, (and statement, if any,) transmitted to them, must be returned to the court, with an indorsement thereon, signed by the foreman, to the effect that the charge is dismissed.

Grand jury may be examined in support of a motion to quash indictment to prove twelve did not concur. Peo. *v.* Shattuck, 6 Abb. N. C., 33; see Peo. *v.* Briggs, 60 How. Pr., 17.

§ 270. Effect of dismissal.—The dismissal of the charge does not, however, prevent its being again submitted to a grand jury, as often as the court may so direct. But without such direction, it cannot be again submitted.

§ 271. Names of witnesses must be indorsed upon indictment.— When an indictment is found, the names of the witnesses examined before the grand jury, or whose depositions may have been read before them, as provided in section 255, must be indorsed upon the indictment before it is presented to the court. If not so indorsed, the court must, upon the application of the defendant, at any time before trial, direct the names of such witnesses as they appear upon the minutes of the grand jury to be furnished to him forthwith.

Discretionary with court to order prosecution to furnish prisoner the evidence used before the grand jury. Eighmy *v.* Peo., 79 N. Y., 546.

§ 272. Indictment must be presented in presence of the grand jury and filed.— An indictment, when found by the grand jury, as prescribed in section 268, must be presented by their foreman, in their presence, to the court, and must be filed with the clerk, and remain in his office as a public record, but it must not be shown to any person other than a public officer, until the defendant has been arrested or has appeared.

Provision for filing merely directory. Dawson *v.* Peo. 25 N. Y., 399; see § 313, *post*.

CHAPTER II.

FORM OF THE INDICTMENT.

SEC. 273. Forms of pleading heretofore existing, abolished.
274. First pleading for the people is indictment.
275. Indictment, what to contain.
276. Form of indictment.
277. When defendant is indicted by fictitious or erroneous name, his true name may be inserted in subsequent proceedings.
278, 279. Indictment must charge but one crime and in one form, except where it may be committed by different means.
280. Statement as to time when crime was committed.
281. Statement as to person injured or intended to be injured.
282. Construction of words used in indictment.
283. Words used in a statute need not be strictly pursued.
284. Indictment when sufficient.
285. Indictment not insufficient for defect of form, not tending to prejudice defendant.
286. Presumptions of law and matters of which judicial notice is taken, need not be stated.
287. Pleading a judgment or determination of, or proceeding before a court or officer of special jurisdiction.
288. Private statute, how pleaded.
289. Pleading in indictment for libel.
290. Pleading in indictment for forgery, where the instrument has been destroyed, or withheld by defendant.
291. Pleading in indictment for perjury or subornation of perjury.
292. Upon indictment against several, one or more may be convicted or acquitted.

§ 273 Forms of pleading heretofore existing abolished.—All the forms of pleading in criminal actions, heretofore existing, are abolished; and hereafter, the forms of pleading, and the rules by which the sufficiency of pleadings is to be determined, are those prescribed by this Code.

§ 274. First pleading is indictment.—The first pleading on the part of the people is the indictment.

§ 275. Indictment, what to contain.—The indictment must contain:

1. The title of the action, specifying the name of the court to which the indictment is presented, and the names of the parties;

2. A plain and concise statement of the act constituting the crime, without unnecessary repetition.

§ 276. Form of Indictment.—The indictment should be signed by the district attorney, and may be substantially in the following form:

Court of oyer and terminer of the county of ; [stating the proper county.]

or,

Court of oyer and terminer of the city and county of New York.

or,

Court of sessions of the county of , [stating the proper county.]

or,

Court of general sessions of the city and county of New York.

or,

City court of the city of [stating the proper city.]

The People of the state of New York
against
A. B.

The grand jury of the [here insert the name of the county, or of the city, or of the city and county, in which the indictment is found,] by this indictment, accuse A. B. of the crime of [here insert the name of the crime, if it have one, such as treason, murder, arson, manslaughter, or the like, or if it be a misdemeanor, having no general name, such as libel, assault, or the like, insert a brief description of it, as it is given by statute;] committed as follows:

The said A. B., on the day of , 18 , at the town, [or city or village, as the case may be] of in this county, [here set forth the act charged as an offense.]

A. B.,
District Attorney of the county of

Substantial compliance. Peo. *v.* Peck, 18 W. D., 527.

§ 277. When indicted by wrong name.—If a defendant is indicted by a fictitious or erroneous name, and in any stage of the proceedings his true name is discovered, it may be inserted in the subsequent proceedings, referring to the fact of his being indicted by the name mentioned in the indictment.

Cowley *v.* Peo., 21 Hun, 415; s. c., 83 N. Y., 464; Barnesciotta *v.* Peo., 10 Hun, 137; s. c., 69 N. Y., 612.

§ 278. Indictment to charge but one crime.—The indictment must charge but one crime and in one form except as in the next section provided.

Reed *v.* Peo., 86 N. Y., 381.

§ 279. Separate counts.—The crime may be charged in separate counts to have been committed *in a different*

manner or by different means; and where the acts complained of may constitute different crimes, such crimes may be charged in separate counts. [Am'd ch. 306 of 1883.]

Counts may refer to, without repeating, facts in each other. Peo. *v* Graves, 5 Park., 134. Court has discretionary power to compel prosecution to elect one of several counts. Hawker *v* Peo., 75 N. Y., 487, see 8 Wend., 211; 3 Park., 15; 47 N. Y., 548; 60 Bar., 26; 1 Hun, 501; Dolan *v*. Peo., 6 Hun, 493; s. c., 64 N. Y., 485; 73 N. Y., 65; 5 Hun, 167; 6 id., 401, 13 id., 395; 12 id., 212; 27 id., 311; 29 id., 580; 1 N. Y. Cr., 146; 90 N. Y., 104; 91 N. Y., 5; 70 id., 38; 72 id., 393

§ 280. Statement as to time.—The precise time at which the crime was committed need not be stated in the indictment; but it may be alleged to have been committed at any time before the finding thereof, except where the time is a material ingredient in the crime.

§ 281. As to person injured.—When an offense involves the commission of, or an attempt to commit a private injury, and is described with sufficient certainty in other respects to identify the act, an erroneous allegation as to the person injured, or intended to be injured, is not material.

§ 282. Construction.—The words used in an indictment must be construed in their usual acceptation, in common language, except words and phrases defined by law, which are to be construed according to their legal meaning.

§ 283. Statute need not be strictly pursued.—Words used in a statute to define a crime need not be strictly pursued in the indictment; but other words, conveying the same meaning, may be used.

Tully *v*. Peo., 67 N. Y., 15.

§ 284. Indictment, when sufficient.—The indictment is sufficient, if it can be understood therefrom

1. That it is entitled in a court having authority to receive it, though the name of the court be not accurately stated;

2. That it was found by a grand jury of the county, or if in a city court, of the city in which the court was held;

3. That the defendant is named, or if his name cannot be discovered, that he is described by a fictitious name, with the statement that it has been found impossible to discover his real name;

4. That the crime was committed at some place within the jurisdiction of the court; except where, as provided

by sections 133 to 138, both inclusive, the act, though done without the local jurisdiction of the county, is triable therein;

5. That the crime was committed at some time prior to the finding of the indictment;

6. That the act or omission, charged as the crime, is plainly and concisely set forth;

7. That the act or omission, charged as the crime, is stated with such a degree of certainty, as to enable the court to pronounce judgment, upon a conviction, according to the right of the case.

Sub. 7. Use of common abbreviation will not vitiate. Patterson *v.* Peo., 12 Hun, 137 What a sufficient statement of facts. Phelps *v.* Peo., 6 Hun, 401; 72 N.Y., 334. Abortion. Eckhardt *v.* Peo., 22 Hun, 525; s. c., 83 N. Y., 462. Larceny. McCarney *v.* Peo, 83 N. Y., 408. Burglary. Quinn *v.* Peo., 71 N. Y., 561. Embezzlement. Bork *v.* Peo., 16 Hun, 476; s. c., 83 N. Y., 609. Arson. Peo. *v.* Pierce, 11 Hun, 633. Corporation. Peo. *v.* Graham, 1 Sheld, 151. False pretenses. 66 Bar., 131; Barber *v.* Peo., 17 Hun, 366; Webster *v.* Peo., 92 N. Y., 422. Cheating. Peo. *v.* Fisk, 1 Sheld., 537. Lotteries, Pickett *v.* Peo., 8 Hun, 83; s. c., 69 N.Y., 609, Peo. *v.* Noelke, 29, Hun, 461. Liquor selling. Schwab *v.* Peo., 4 Hun, 520; Jefferson *v.* Peo., 28 Hun, 52. General averments Peo. *v.* Weston, 1 Sheld., 555. Bank officers. Peo. *v.* Williams, ib., 568. Election officers. Hall *v* Peo., 90 N.Y., 498; Boland *v.* Peo., ib., 678. See Pontius *v.* Peo., 82 N. Y., 339; S. and T. P. Co. *v.* Peo., 66 Bar., 25; Peo. *v.* Hallenbeck, 52 How. Pr., 502; Peo. *v.* O. and T., 83 N. Y., 436.

§ 285. Defects of form.—No indictment is insufficient, nor can the trial, judgment, or other proceedings thereon be affected, by reason of an imperfection in matter of form, which does not tend to the prejudice of the substantial rights of the defendant, upon the merits.

See Schrumpf *v.* Peo., 14 Hun, 10. Pontius *v.* Peo., 82 N. Y., 339; Gray *v.* Peo., 21 Hun, 140. Furnishing defendant grand jury minutes to aid indictment. Eighmy *v.* Peo., *post.*

§ 286. What need not be stated.—Neither presumptions of law, nor matters of which judicial notice is taken, need be stated in an indictment.

§ 287. Pleading a judgment as duly given. — In pleading a judgment or other determination of a court or officer of special jurisdiction, it is not necessary to state the facts conferring jurisdiction; but the judgment or determination may be stated to have been duly given or made. The facts constituting jurisdiction, however, must be established on the trial.

See Eighmy *v.* Peo. 79 N. Y., 546.

§ 288. Private statute, how pleaded.—In pleading a private statute, or a right derived therefrom, it is sufficient to refer to the statute, by its title and the day of its passage, and the court must thereupon take judicial notice thereof.

§ 289. Indictment for libel.—An indictment for libel need not set forth any extrinsic facts for the purpose of showing the application to the party libeled, of the defamatory matter on which the indictment is founded; but it is sufficient to state generally, that the same was published concerning him; and the fact that it was so published, must be established on the trial.

§ 290. Indictment for forgery, etc.—When an instrument, which is the subject of an indictment for forgery, has been destroyed or withheld by the act or procurement of the defendant, and the fact of the destruction or withholding is alleged in the indictment, and established on the trial, the misdescription of the instrument is immaterial.

§ 291. Indictment for perjury, etc.—In an indictment for perjury or subornation of perjury, it is sufficient to set forth the substance of the controversy or matter in respect to which the crime was committed, and in what court, or before whom, the oath alleged to be false was taken, and that the court or person before whom it was taken had authority to administer it, with proper allegations of the falsity of the matter on which the perjury is assigned; but the indictment need not set forth the pleadings, record or proceedings with which the oath is connected, nor the commission or authority of the court or person where or before whom the perjury was committed.

Eighmy *v.* Peo., 79 N. Y., 546; Stratton *v.* Peo., 81 N. Y., 629.

§ 292. Indictment against several, etc.—Upon an indictment against several defendants any one or more may be convicted or acquitted.

CHAPTER III.

AMENDMENT OF THE INDICTMENT.

SEC. 293. When amendment allowed.
294. Trial to proceed.
295. Effect of verdict, etc.

§ 293. When amendment allowed. — Upon the trial of an indictment, when a variance between the allegation therein and the proof, in respect to time, or in the name or description of any place, person or thing, shall appear, the court may, in its judgment, if the defendant cannot be thereby prejudiced in his defense on the merits, direct the indictment to be amended, according to the proof, on such terms as to the postponement of the trial, to be had before the same or another jury, as the court may deem reasonable.

When denied. Peo. *v.* Poucher, 30 Hun, 576.

§ 294. Trial how to proceed.—After such amendment, the trial, whenever the same shall be proceeded with, shall proceed in the same manner and with the same consequences, as if no such variance had occurred.

§ 295. Effect of verdict, etc. — A verdict and judgment, which shall be given after the making of any such amendment, shall be of the same force and effect, as if the indictment had originally been found in its amended form.

CHAPTER IV.

ARRAIGNMENT OF THE DEFENDANT.

SEC. 296. Defendant must be arraigned in the court in which indictment is found, if triable therein, or if not, in that to which it is sent or removed.
297. If indictment be for felony, defendant must be present; if for misdemeanor, he may appear by counsel.
298. When personal appearance is necessary, if defendant be in custody, he must be brought before the court.
299. If discharged on bail or deposit, bench warrant to issue.
300. Bench warrant, by whom, and how issued.
301. Form of bench warrant.
302. Direction in bench warrant, if indictment be for misdemeanor.

SEC 303. If offense be bailable, order for bail to be indorsed on bench warrant.
304. Bench warrant, how served.
305. Proceedings on bench warrant, when defendant is brought before magistrate of another county.
306. Ordering defendant into custody, or increasing bail, when indictment is for felony.
307. Defendant, if present, to be committed; if not, bench warrant to issue.
308. Defendant appearing for arraignment without counsel, to be informed of his right to counsel.
309. Arraignment, how made.
310. If he gave another name, subsequent proceedings to be had by that name, referring to name in the indictment.
311. Time allowed defendant to answer indictment.
312. How defendant may answer indictment.

§ 296. Where defendant must be arraigned.—When an indictment is filed, the defendant must be arraigned thereon, before the court in which it is found, or before the court to which it is sent or removed.

When court of sessions cannot arraign. Peo. *v.* McCraney, 21 How. Pr., 149.

§ 297. Appearance.—If an indictment be for a felony, the defendant must be personally present when arraigned; but if for a misdemeanor only, his personal appearance is unnecessary, and he may appear upon the arraignment by counsel.

Presence in adjoining room. Peo. *v.* Bragle, 88 N.Y., 585; s. c., 26 Hun, 378. When unnecessary. Peo *v.* Vail, 57 How. Pr., 581.

§ 298. When in custody.—When his personal appearance is necessary, if he be in custody, the court may direct the officer in whose custody he is, to bring him before it to be arraigned.

§ 299. Failure to appear.—If the defendant have been discharged on bail, or have deposited money instead thereof, and do not appear to be arraigned, or if the defendant be for any cause absent, when his personal attendance is necessary, the court, in addition to the forfeiture of any undertaking of bail, or of any money deposited, may direct the clerk to issue a bench warrant for his arrest.

§ 300. Bench warrant, by whom issued.—The clerk, on the application of the district attorney, may accord-

ingly at any time after the order, whether the court be sitting or not, issue a bench warrant to one or more counties. A bench warrant for the arrest of any defendant indicted, may also be issued by the district attorney at any time after the indictment is found.

§ 301. Form of bench warrant.—The bench warrant issued upon the indictment must, if the crime be a felony, be substantially in the following form:

"County of *Albany*, [or as the case may be].

"In the name of the People of the state of New York:

"To any peace officer in this state. An indictment having been found on the day of , 18 , in the *court of sessions of the county of Albany* [or as the case may be] charging C. D. with the crime of [designating it generally].

"You are therefore commanded, forthwith to arrest the above named C. D., and bring him *before that court*, [or if the indictment have been sent or removed to another court,] before the *court of oyer and terminer of that county*, [or as the case may be,] to answer the indictment; or if the court have adjourned for the term, that you deliver him into the custody of the sheriff of the county of *Albany*, [or as the case may be, or in the city and county of New York "to the keeper of the city prison of the city of New York."]

"City [or town] of , the day of , 18

"By order of the court,

E. F. *Clerk.*"

or G. H.,

District Attorney of the county of ."

What to state. Peo. *v.* Sherwin, 17 W D., 125.

§ 302. Bench warrant in cases of misdemeanor.—If the crime be a misdemeanor, the bench warrant must be in a similar form, adding to the body thereof, a direction to the following effect: "or if he require it, that you take him before any magistrate in that county, or in the county in which you arrest him, that he may give bail to answer the indictment."

§ 303. If offense bailable, indorsement on bench warrant.—If the crime charged be bailable, the court

upon directing the bench warrant to issue, may fix the amount of bail; and in such case an indorsement must be made upon the bench warrant and signed by the clerk, to the following effect: "The defendant is to be admitted to bail in the sum of ——— dollars."

§ 304. **Bench warrant how served.**—The bench warrant may be served in any county, in the same manner as a warrant of arrest, except, that when served in another county, it need not be indorsed by a magistrate of that county.

§ 305. **Proceedings before magistrate of another county.**—If the defendant be brought before a magistrate of another county for the purpose of giving bail, the magistrate must proceed in respect thereto, in the same manner as if the defendant had been brought before him upon a warrant of arrest, and the same proceedings may be had thereon, as provided in sections 159 to 161, both inclusive.

§ 306. **Ordering defendant into custody, or increasing bail.**—If the defendant, before the finding of an indictment, has given bail for his appearance to answer the charge, the court, to which the indictment is presented or sent or removed for trial, may order the defendant to be committed to actual custody, either without bail, or unless he give bail in an increased amount, to be specified in the order.

§ 307. **Defendant, if present, to be committed; if not, bench warrant to issue.**—If the defendant be present when the order is made, he must be forthwith committed accordingly. If he be not present, a bench warrant must be issued and proceeded upon, in the manner provided in this chapter.

§ 308. **Defendant appearing without counsel.**—If the defendant appear for arraignment, without counsel, he must be asked if he desire the aid of counsel, and if he does, the court must assign counsel.

§ 309. Arraignment, how made.—The arraignment must be made by the court, or by the clerk or district attorney, under its direction, and consists in stating the charge in the indictment to the defendant, and in asking him whether he pleads guilty or not guilty thereto. If the defendant demand it, the indictment must be read, or a copy thereof furnished to him before requiring him to plead.

§ 310. Misnomer.—If when arraigned the defendant allege that another name is his true name, the court must direct an entry thereof in the minutes of the arraignment; and the subsequent proceedings on the indictment may be had against him, by that name, referring also to the name by which he is indicted.

§ 311. Time to answer indictment.—If, on the arraignment, the defendant require it, he must be allowed until the next day, or such further time may be allowed him as the court deems reasonable, to answer the indictment.

§ 312. Answering indictment.—In answer to the indictment, the defendant may either move the court to set the same aside, or may demur or plead thereto.

Defendant cannot plead that grand jury was irregularly organized. Peo. *v.* Dolan, 6 Hun, 232; S. C., ib., 493; 64 N. Y., 485. See Hope *v.* Peo., 11 W. D., 336; Peo. *v.* Briggs, 60 How., 17.

CHAPTER V.

SETTING ASIDE THE INDICTMENT.

SEC. 313. Indictment, when set aside on motion.
314. Defendant, when precluded from objecting to indictment in any other manner.
315. Motion, when heard.
316. If denied, defendant must immediately demur or plead.
317. If granted, defendant discharged, unless the case be submitted to the same or another grand jury.
318. Effect of order for re-submission.
319. When new indictment not found.
320. Order to set aside indictment, no bar to another prosecution.

§ 313. Indictment, when set aside on motion.—The indictment must be set aside, by the court in which the

defendant is arraigned, and upon his motion, in either of the following cases:

1. When it is not found, indorsed and presented, as prescribed in sections 268 and 272;

2. When a person has been permitted to be present during the session of the grand jury, while the charge embraced in the indictment was under consideration, except as provided in sections 262, 263 and 264.

What sufficient grand jury. Peo. *v.* Dolan, 6 Hun, 232, ib., 493; 64 N. Y., 405; Peo. *v.* Petra, 30 Hun, 98, s. c., 92 N. Y., 128; Peo. *v.* Fitzpatrick, 30 Hun, 493; Peo. *v.* Clewes, 57 How., Pr., 245; Peo. *v.* Vail, ib., 81; Peo. *v.* Moore, 65 id., 177; Peo. *v.* Brigg, 60 id., 17; Peo. *v.* Shattuck, 6 Abb., N. C., 31.

§ 314. Defendant, when concluded.—If the motion to set aside the indictment be not made, the defendant is precluded from afterward taking the objections mentioned in the last section.

See Brotherton *v.* Peo., 75 N. Y., 159.

§ 315. Motion, when heard.—The motion to set aside an indictment must be heard at the time of the arraignment, unless, for good cause, the court postpone the hearing to another time.

§ 316. When to demur or plead.—If the motion be denied, the defendant must immediately answer the indictment, either by demurring or pleading thereto.

§ 317. Indictment set aside.—If the motion be granted, the court must order that the defendant, if in custody, be discharged therefrom, or if under bail, that his bail be exonerated, or if he have deposited money instead of bail, that the money be refunded to him; unless the court direct that the case be re-submitted to the same or another grand jury.

§ 318. Effect of order for re-submission.—If the court direct that the case be re-submitted, the defendant, if already in custody, must so remain, unless he be admitted to bail; or if already admitted to bail, or money have been deposited instead thereof, the bail or money is answerable for the appearance of the defendant to answer a new indictment.

§ 319. When new indictment not found. — Unless a new indictment be found, before the next grand jury of the county or city is discharged, the court must, on the discharge of such grand jury, make the order prescribed by section 317.

§ 320. Order to set aside indictment not a bar. — An order to set aside an indictment, as provided in this chapter, is no bar to a future prosecution for the same offense.

CHAPTER VI.

DEMURRER.

SEC. 321. Only pleading for defendant, is demurrer or plea.
322. Demurrer or plea, when put in.
323. Grounds of demurrer.
324. Demurrer, how put in, and its form.
325. When heard.
326. Judgment on demurrer.
327. If allowed, judgment a bar to another prosecution, unless direction that the case be re-submitted to the same or another grand jury.
328. If re-submission not ordered, defendant discharged.
329. Proceedings, if re-submission ordered.
330. If demurrer disallowed, defendant may be permitted to plead. When he must do so, and effect of his omission.
331. When objections, forming ground of demurrer, may be taken at the trial, or in arrest of judgment.

§ 321. Defendant's pleading. — The only pleading on the part of the defendant is either a demurrer or a plea.

§ 322. Demurrer or plea, when put in. — Both the demurrer and the plea must be put in, either at the time of the arraignment, or at such other time as may be allowed to the defendant for that purpose.

§ 323. Grounds of demurrer. — The defendant may demur to the indictment, when it appears upon the face thereof,

1. That the grand jury, by which it was found, had no legal authority to inquire into the crime charged, by reason of its not being within the local jurisdiction of the county; or

2. That the indictment does not conform substantially to the requirements of sections 275 and 276; or

3. That more than one crime is charged in the indictment within the meaning of sections 278 or 279; or

4. That the facts stated do not constitute a crime; or

5. That the indictment contains matter, which, if true, would constitute a legal justification or excuse for the acts charged, or other legal bar to the prosecution.

§ 324. Demurrer, and its form.— The demurrer must be in writing, signed either by the defendant or his counsel, and filed. It must distinctly specify the grounds of objection to the indictment, or it may be disregarded.

§ 325. When heard.— Upon the demurrer being filed, the objections presented thereby must be heard at such time as the court may appoint.

§ 326. Judgment on demurrer.— The court must give judgment upon the demurrer either allowing or disallowing it; and an order to that effect must be entered upon the minutes.

When defendant can appeal. Peo. *v.* Beman, 22 Hun, 283. No amendment Peo. *v.* Poucher, 30 Hun, 576.

§ 327. If allowed, when a bar.— If the demurrer be allowed, the judgment is final upon the indictment demurred to, and is a bar to another prosecution for the same offense, unless the court, being of opinion that the objection on which the demurrer is allowed may be avoided in a new indictment, direct the case to be re-submitted to the same or another grand jury.

§ 328. When defendant to be discharged. — If the court do not direct the case to be re-submitted, the defendant, if in custody, must be discharged, or if admitted to bail, his bail is exonerated, or if he have deposited money instead of bail, the money must be refunded to him.

§ 329. Proceedings on re-submission.— If the court direct that the case be submitted anew, the same proceedings must be had thereon as are prescribed in sections 318 and 319.

§ 330. If demurrer disallowed.— If the demurrer be disallowed, the court must permit the defendant, at his election, to plead; which he must do forthwith, or at such time as the court may allow. If he do not plead, judgment must be pronounced against him, if the crime charged is a misdemeanor, otherwise a plea of "not guilty" must be entered.

§ 331. What objections, forming ground of demurrer, may be taken after.— The objections mentioned in section 323 can only be taken by demurrer; except that the objection to the jurisdiction of the court over the subject of the indictment, or that the facts stated do not constitute a crime, may be taken at the trial, under the plea of not guilty, and in arrest of judgment.

CHAPTER VII.

PLEA.

SEC. 332. The different kinds of pleas.
333. Plea, how put in.
334. Its form.
335. Plea of guilty, how put in.
336. Plea of insanity.
337. Plea may be withdrawn, by permission of the court.
338. What is denied by a plea of not guilty.
339. What may be given in evidence under it.
340, 341. What is deemed a former acquittal.
342. If defendant refuse to answer indictment, plea of not guilty to be entered.

§ 332. The different pleas.— There are three kinds of pleas to an indictment; a plea of

1. Guilty;
2. Not guilty;
3. A former judgment of conviction or acquittal of the crime charged; which may be pleaded either with or without the plea of not guilty.

Sub. 3, Former trial and conviction, without judgment is a bar. Shepherd *v.* Peo., 25 N. Y., 406. See also as to pleas in bar. Peo. *v.* Barrett, 1 Johns. Cas., 66; Id. *v.* Olcott, 2 id., 66; Peo. *v.* Cramer, 5 Pai., 171; Peo. *v.* McCloskey, Ib., 57; Peo. *v.* Saunders, 4 id., 196; Peo. *v.* Warren, 1 id., 338; Peo. *v.* Allen, 1 id., 445; Peo. *v.* Van Keuren, 5 id., 66; Peo. *v.* Kramer, 4 id., 217; Peo. *v.* Townsend, 3 Hill, 479; Peo. *v.* Krumer, 1 Sheld, 549; Gardner *v.* Peo., 6 Park, 155, 190; Peo. *v.* Casborus, 13 Johns., 351. Where wrong judgment rendered on regular conviction,

cannot retry. Shepherd *v.* Peo., 25 N. Y., 406; but may remit record and resentence. Hussy *v.* Peo., 47 Bar., 503. When former judgment reversed, new indictment may be found. Kelly *v.* Peo., 6 Hun 509. See Peo. *v.* Ruloff, 5 Park., 77. What is jeopardy? Canter *v.* Peo., 1 Abb. Dec., 305; Burns *v.* Peo., 1 Park., 182; Peo. *v.* Comstock, 8 Wend., 549; O'Connell *v.* Peo., 62 How. P. R., 436, affd. Ct. App.; Craft *v.* Peo., 15 Hun, 484. Insufficiency of evidence no plea. Hope v. Peo., 83 N. Y., 418.

§ 333. Plea, how put in.— Every plea must be oral, and must be entered upon the minutes of the court.

§ 334. Form.— The plea must be entered in substantially the following form:

1. If the defendant plead guilty to the crime charged in the indictment, "the defendant pleads that he is guilty;"

2. If he plead guilty to any lesser crime than that charged in the indictment, "the defendant pleads guilty to the crime of"— (naming it).

3. If he plead not guilty, "the defendant pleads not guilty."

4. If he plead a former conviction or acquittal: "the defendant pleads, that he has already been convicted (or acquitted, as the case may be), of the crime charged in this indictment, by the judgment of the court of —— (naming it), rendered at —— (naming the place), on the —— day of ——."

§ 335. Plea of guilty. — A plea of guilty can only be put in by the defendant himself in open court, except upon an indictment against a corporation; in which case, it may be put in by counsel.

§ 336. Plea of insanity. — Whenever a person, in confinement under indictment, desires to offer the plea of insanity, he may present such plea at the time of his arraignment, as a specification under the plea of not guilty.

Prisoner is entitled to benefit of any reasonable doubt as to his sanity. Brotherton *v.* Peo., 75 N. Y., 159; Peo. *v.* McCann, 16 N. Y., 70.

§ 337. When plea may be withdrawn. — The court may in its discretion, at any time before judgment upon a plea of guilty, permit it to be withdrawn, and a plea of not guilty substituted.

§ 338. What is denied by plea of not guilty.— The plea of not guilty is a denial of every material allegation in the indictment.

Former conviction cannot be given under plea of not guilty. Peo. *v.* Benjamin, 2 Park., 201.

§ 339. What may be given in evidence under it.— All matters of fact, tending to establish a defense, other than that specified in the third subdivision of section 332, may be given in evidence under a plea of not guilty.

§ 340. What is not deemed a former acquittal.— If the defendant were formerly acquitted on the ground of a variance between the indictment and the proof, or the indictment were dismissed upon an objection to its form or substance, without a judgment of acquital, it is not deemed an acquittal of the same offense.

§ 341. What is deemed a former acquittal.— When, however, the defendant was acquitted on the merits, he is deemed acquitted of the same offense, notwithstanding a defect in form or substance, in the indictment on which he was acquitted.

Former acquittal presumed to be on merits. Croft *v.* Peo., 15 Hun, 484.

§ 342. If defendant refuse to answer indictment.— If the defendant refuse to answer an indictment, by demurrer or plea, a plea of not guilty must be entered.

CHAPTER VIII.

REMOVAL OF THE ACTION, BEFORE TRIAL.

SEC. 343. Existing writs and proceedings, to remove indictment before trial abolished.
344. When, and in what cases, indictment may be removed before trial.
345. If former trial were had, indictment may be removed before the new trial.
346. Application for removal, how made.
347. Stay of trial, how obtained, to enable defendant to apply for removal.

SEC. 343. Decision on application for stay, to be indorsed on papers and filed.
349. If application for stay be denied, no other application can be made.
350. Violation of last section, a misdemeanor and contempt, and order of removal to be vacated.
351. Order of removal to be filed, and pleadings and proceedings to be transmitted.
352. Proceedings on removal, if defendant be in custody.
353. Order for removal must be filed, before a juror is sworn. Authority of the court to which indictment is removed.

§ 343. Existing writs and proceedings, to remove indictment before trial abolished. — All writs and other proceedings heretofore existing, for the removal, upon the application of the defendant, of criminal actions prosecuted by indictment, from one court to another before trial, are abolished.

§ 344. When and in what cases, indictment may be removed before trial. — A criminal action, prosecuted by indictment, may, at any time before trial, on the application of the defendant, be removed from the court in which it is pending, as provided in this chapter, in the following cases:

1. From a court of sessions or a city court, to the court of oyer and terminer of the same county, for good cause shown;

2. From a court of oyer and terminer or sessions, or a city court, to the court of oyer and terminer of another county, on the ground that a fair and impartial trial cannot be had in the county or city where the indictment is pending.

Peo. *v.* Sessions, 62 How. P. R., 415; Thompson *v.* Peo., 6 Hun, 135; Dolan *v.* Peo. ib., 493; s. c., 64 N. Y., 485.

§ 345. If former trial, how removed.—If one or more trials be had, and a new trial is necessary, either by reason of the discharge of a jury without a verdict, or of the granting of a new trial, the removal may be allowed at any time before the new trial.

§ 346. Application for removal.—The application for the order of removal must be made to the supreme court, at a special term in the district, upon notice of at least ten days to the district attorney of the county

where the indictment is pending, with a copy of the affidavits or other papers on which the application is founded.

What affidavits must contain. Peo. *v.* Bodine, 7 Hill, 147; Peo. *v.* L. I. R. R. Co., 4 Park., 602; Peo. *v.* Harris, 4 Den., 150; Peo. *v.* Baker, 3 Park., 181; Peo. *v.* Sammis, 3 Hun, 560.

§ 347. Stay, how obtained, to apply for removal.—To enable the defendant to make the application, a judge of the supreme court may, in his discretion, upon good cause shown by affidavit, make an order staying the trial of the indictment, until the application can be made and decided.

§ 348. Decision on application for stay.—When an application for an order to stay the trial is made to the supreme court, it must indorse its decision on the affidavits or other papers presented, and cause them to be immediately filed with the clerk of the court, in which the indictment is pending.

§ 349. But one application can be made.—If the application for an order to stay the trial has been made before one judge and denied, a similar application cannot be made to another judge.

§ 350. Violation of last section.—A violation of the last section is punishable not only as a misdemeanor, but as a contempt of the court in which the indictment is pending; and that court must vacate an order of removal made in violation thereof.

§ 351. Proceedings on order of removal.—If the supreme court order the removal of the action, a certified copy of the order for that purpose must be delivered to and filed with the clerk of the court where the indictment is pending; who must thereupon transmit the same with the pleadings and proceedings in the action, including all undertakings for the appearance of the defendant or of the witnesses, or a certified copy of the same, to the court, to which the action is removed.

§ 352. Id.; if defendant be in custody.—If the defendant be in custody, and the removal be to the court of oyer and terminer of another county, than that where the indictment is pending, the order must provide for the removal of the defendant, by the sheriff of the county where he is imprisoned, to the custody of the proper officer of the county to which the action is removed; and he must be forthwith removed accordingly.

§ 353. When order for removal must be filed.—An order for the removal of the action is of no effect, unless a certified copy thereof be filed, as required by section 351, before a juror is sworn to try the indictment. When thus filed, the court to which the action is removed, must proceed to trial and judgment therein.

Loomis *v.* Peo., 19 Hun, 601.

TITLE VI.

Of the Proceedings on the Indictment, before Trial.

CHAPTER I. The mode of trial.
II. Formation of the trial jury.
III. Challenging the jury.

CHAPTER I.

THE MODE OF TRIAL.

SEC. 354. Issue of fact, defined.
355. How tried.
356. Appearance.
357. Preparation for trial.

§ 354. Issue of fact, defined.—An issue of fact arises,

1. Upon a plea of not guilty; or

2. Upon a plea of a former conviction or acquittal of the same crime.

§ 355. How Tried.—An issue of fact must be tried by a jury of the county in which the indictment was found, unless the action be removed, by order of the supreme court, into the court of oyer and terminer of

another county, as provided in the second subdivision of section 344.

§ 356. Appearance.—If the indictment be for a misdemeanor, the trial may be had in the absence of the defendant, if he appear by counsel; but if the indictment be for a felony, the defendant must be personally present.

Presence in connecting room. Peo. *v.* Bragle, 88 N. Y., 585; s. c., 26 Hun, 378.

§ 357. Preparation for trial.—After his plea, the defendant is entitled to at least two days to prepare for his trial, if he require it.

Postponement on account of absent witnesses. People *v.* Vermilyea, 7 Cow., 369. Affidavits therefor, what to contain. Broad's Case, 3 C. H. Rec., 7; Peo. *v.* Wilson, 3 Park. 199; Peo. *v.* Horton, 4 ib., 222. No exception lies to refusal to postpone trial for witnesses. Eighmy *v.* Peo., 79 N. Y., 546.

CHAPTER II.

FORMATION OF THE TRIAL JURY.

SEC. 358. Jurors in criminal courts.

§ 358. Jurors in criminal courts.—The trial jury is formed, as prescribed by the Code of Civil Procedure.

Qualifications of trial jurors. Code of civil procedure, §§ 1027-1062 inclusive. Formation of the jury, Ib., §§ 1163-1180; ib., §§ 1190, 3350, 3351. Alien not entitled to special jury. Ib., § 1190. Trial jurors in Kings county. Ib., §§ 1029, 1126-1162, 1174, 1191. Trial jurors in city and county of New York. Ib., §§ 1029, 1079-1125, 1174, 1191. Legislature may regulate manner of procuring jury. Stokes *v.* Peo., 53 N. Y., 164; Gardner *v.* Peo., 6 Park., 155. Mere irregularities in drawing jury, not prejudicial, no ground of error. Cox *v.* Peo., 80 N. Y., 500; Peo. *v.* Petrea, 30 Hun, 98; s. c., 92 N. Y., 128.

CHAPTER III.

CHALLENGING THE JURY.

SEC. 359. Definition and division of challenges.
360. When there are several defendants, they must unite in their challenges.
361. Challenge to the panel, defined.
362. Upon what founded.
363. When and how taken.
364. If sufficiency of the facts be denied, adverse party may except. Exception, how made and tried.

SEC. 365. If exception overruled, court may allow denial of challenge. If allowed, may permit challenge to be amended.
366. Denial of challenge, how made, and trial thereof.
367. Who may be examined on trial of challenge.
368. If challenge allowed, jury to be discharged. If disallowed, jury to be impaneled.
369. Defendant to be informed of his right to challenge an individual juror.
370. Kinds of challenge to individual juror.
371. Challenge, when taken.
372. Peremptory challenge.
373. Number of peremptory challenges.
374. Definition and kinds of challenge for cause.
375. General causes of challenge.
376. Particular causes of challenge.
377. Grounds of challenge for implied bias.
378. Grounds of challenge for actual bias.
379. Exemption, not a ground of challenge.
380. Causes of challenge, how stated.
381. Exceptions to challenge and denial thereof.
382. Challenge, how tried, if denied.
383. Juror challenged may be examined as a witness.
384. Rules of evidence on trial of challenge.
385. Challenges, first by defendant and then by the people.
386. Order of challenges.
387. Jury to be sworn, etc.

§ 359. Definition and division of challenges.—A challenge is an objection made to trial jurors, and is of two kinds:

1. To the panel;
2. To an individual juror.

§ 360. Challenges on joint trials.—When several defendants are tried together they cannot sever their challenges, but must join therein.

§ 361. Challenge to the panel, defined.—A challenge to the panel is an objection made to all the trial jurors returned, and may be taken as well to the panel returned for the term, as to an additional panel ordered to complete the jury.

Prisoner can waive challenge to the array after it is allowed. Pierson *v.* Peo., 79 N. Y., 424.

§ 362. Upon what founded.—A challenge to the panel can be founded only on a material departure, to

the prejudice of the defendant, from the forms prescribed by the Code of Civil Procedure, in respect to the drawing and return of the jury, or on the intentional omission of the sheriff to summon one or more of the jurors drawn.

§ 363. When and how taken.—A challenge to the panel must be taken before a juror is sworn, and must be in writing, specifying distinctly the facts constituting the ground of challenge.

A challenge in the alternative is bad. Cox *v.* Peo., 19 Hun, 430.

§ 364. If sufficiency of the facts be denied.—If the sufficiency of the facts alleged as a ground of challenge be denied, the adverse party may except to the challenge. The exception need not be in writing, but must be entered upon the minutes of the court; and thereupon the court must proceed to try the sufficiency of the challenge, assuming the facts alleged therein to be true.

Cox *v.* Peo., 19 Hun, 430; 80 N. Y., 500.

§ 365. Court, may afterwards, allow withdrawal of exception or amendment to challenge.—If, on the exception, the court deem the challenge sufficient, it may, if justice require it, permit the party excepting, to withdraw his exception, and to deny the facts alleged in the challenge. If the exception be allowed, the court may, in like manner, permit an amendment of the challenge.

§ 366. Denial of challenge, how made, and trial thereof.—If the challenge be denied, the denial may, in like manner, be oral, and must be entered upon the minutes of the court; and the court must proceed to try the question of fact.

§ 367. Who may be examined on trial of challenge.—Upon the trial of the challenge, the officers, whether judicial or ministerial, whose irregularity is complained of, as well as any other persons, may be examined to prove or disprove the facts alleged as the ground of the challenge.

§ 368. Determination of challenge. — If, either upon an exception to the challenge, or a denial of the facts, the challenge be allowed, the court must discharge the jury, so far as the trial of the indictment in question is concerned. If the challenge be disallowed, the court must direct the jury to be impaneled.

§ 369. Defendant to be informed of his right to challenge. — Before a juror is called, the defendant must be informed by the court, or under its direction, that if he intend to challenge an individual juror, he must do so when the juror appears, and before he is sworn.

§ 370. Challenges to juror. — A challenge to an individual juror may be taken either by the people or by the defendant, and is either

1. Peremptory, or,
2. For cause.

§ 371. Challenge when taken. — A challenge must be taken when the juror appears, and before he is sworn; but the court may, in its discretion, for good cause, set aside a juror at any time before evidence is given in the action.

See Peo. v. Damon, 13 Wend., 351.

§ 372. Peremptory challenge. — A peremptory challenge is an objection to a juror, for which no reason need be given, but upon which the court must exclude him.

Friery v. Peo., 2 Keyes, 424.

§ 373. Id.; number of. — Peremptory challenges must be taken in number as follows:

1. If the crime charged be punishable with death, thirty;
2. If punishable with imprisonment for life, or for a term of ten years or more, twenty;
3. In all other cases, five.

§ 374. Challenge for cause.—A challenge for cause is an objection to a particular juror, and is either,

1. General, that the juror is disqualified from serving in any case; or

2. Particular, that he is disqualified from serving in the case on trial.

§ 375. General causes of challenge.—General causes of challenge are,

1. A conviction for a felony;

2. A want of any of the qualifications prescribed by the Code of Civil Procedure, to render a person a competent juror.

Sub. 2. General provisions, qualifications of trial juror. Code of Civ. Proc., §§ 1027, 1028. Disqualification of public officers. Ib., § 1029. Qualifications in Kings county. Ib., §§ 1029, 1126. Qualifications in city and county of New York. Ib., §§ 1029, 1079.

§ 376. Particular causes of challenge.—Particular causes of challenge are of two kinds:

1. For such a bias, as, when the existence of the facts is ascertained, does in judgment of law disqualify the juror, and which is known in this Code as implied bias;

2. For the existence of a state of mind on the part of the juror, in reference to the case, or to either party, which satisfies the court, in the exercise of a sound discretion, that such juror cannot try the issue impartially and without prejudice to the substantial rights of the party challenging, and which is known in this Code as actual bias. But the previous expression or formation of an opinion or impression in reference to the guilt or innocence of the defendant, or a present opinion or impression in reference thereto, is not a sufficient ground of challenge for actual bias, to any person otherwise legally qualified, if he declare on oath, that he believes that such opinion or impression will not influence his verdict, and that he can render an impartial verdict according to the evidence, and the court is satisfied, that he does not entertain such a present opinion or impression as would influence his verdict.

Sub. 2. See Thomas *v.* Peo., 67 N. Y., 218; Peo. *v.* Mullin, 3 Alb. L. J., 150; Greenfield *v.* Peo., 74 N. Y., 277; Phelps *v.* Peo., 6 Hun, 401; 72 N. Y., 334; Manke *v.* Peo., 17 Hun, 410; Balbo *v.* Peo., 80 N.Y., 484; Cox *v.* Peo., ib. 500; Abbott *v* Peo., 86 N. Y., 460; Peo. *v.* Cornette, 16 W. D., 442; Peo. *v.* Welch, 1 N. Y. C. R., 487.

§ 377. Challenge for implied bias. — A challenge for implied bias may be taken for all or any of the following causes, and for no other:

1. Consanguinity or affinity within the ninth degree, to the person alleged to be injured by the crime charged, or on whose complaint the prosecution was instituted, or to the defendant;

2. Bearing to him the relation of guardian or ward, attorney or client, or client of the attorney or counsel for the people or defendant, master or servant, or landlord or tenant, or being a member of the family of the defendant, or of the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or in his employment on wages;

3. Being a party adverse to the defendant in a civil action or having complained against, or been accused by him in a criminal prosecution;

4. Having served on the grand jury which found the indictment, or on a coroner's jury which inquired into the death of a person whose death is the subject of the indictment;

5. Having served on a trial jury, which has tried another person for the crime charged in the indictment;

6. Having been one of a jury formerly sworn to try the same indictment, and whose verdict was set aside or which was discharged without a verdict, after the cause was submitted to it;

7. Having served as a juror, in a civil action brought against the defendant, for the act charged as a crime;

8. If the crime charged be punishable with death, the entertaining of such conscientious opinions as would preclude his finding the defendant guilty; in which case he shall neither be permitted nor compelled to serve as a juror.

Sub. 1. See Cole *v.* Van Keuren, 51 How. Pr., 451. Sub. 8. See Peo. *v.* Damon, 13 Wend., 351.

§ 378. Challenge for actual bias. — A challenge for actual bias may be taken for the cause mentioned in the second subdivision of section 376, and for no other cause.

§ 379. Exemption. — An exemption from service on a jury is not a cause of challenge, but the privilege of the person exempted.

General grounds of exemption. Code of Civ. Proc., §§ 1030, 1031. Id. in Kings county. Ib., §§ 1127, 1128. Id. in city and county of New York. Ib., §§ 1081, 1082. See Peo. *v.* Morissey, 1 Sheld., 295.

§ 380. Statement of challenge. — In a challenge for implied bias, one or more of the causes stated in section 377 must be alleged. In a challenge for actual bias, the cause stated in the second subdivision of section 376 must be alleged. In either case, the challenge may be oral, but must be entered upon the minutes of the court.

See Freeman *v.* Peo., 4 Den., 131.

§ 381. Exceptions to challenge. — The adverse party may except to the challenge, in the same manner as to a challenge to the panel; and the same proceedings must be had thereon, as prescribed in section 364, except that, if the challenge be allowed, the juror must be excluded. The adverse party may also orally deny the facts alleged as the ground of challenge.

§ 382. Challenge, how tried. — If the facts be denied, the challenge must be tried by the court which must either allow or disallow the same and direct an entry accordingly on the minutes. If the challenge be allowed, the juror must be discharged.

§ 383. Juror challenged may be examined. — Upon the trial of a challenge to an individual juror, the juror challenged may be examined as a witness, to prove or disprove the challenge; and is bound to answer every question pertinent to the inquiry therein.

§ 384. Rules of evidence. — Other witnesses may also be examined on either side; and the rules of evidence applicable to the trial of other issues, govern the admission or exclusion of testimony, on the trial of the challenge.

§ 385. Order of challenges.—Challenges to an individual juror must be taken, first by the people and then by the defendant.

§ 386. Order of challenges. — Challenges of either party must be taken:

1. To the panel.
2. To an individual juror, for a general disqualification.
3. To an individual juror, for implied bias.
4. To an individual juror, for actual bias.
5. Peremptory.

§ 387. Jury to be sworn, etc.—The first twelve persons who appear, as their names are drawn and called who are proved as indifferent between the parties, and are not discharged or excused, must be sworn; and constitute the jury to try the issue.

Improper treatment of a juror by court, ground for new trial. Peo. ex rel. Flaherty v. Nellson, 22 Hun, 1.

TITLE VII.

Of the trial.

CHAPTER I. The trial.
II. Conduct of the jury, after the cause is submitted to them.
III. The verdict.

CHAPTER I.

THE TRIAL.

SEC. 388. In what order trial to proceed.
389. Defendant presumed innocent, until contrary proved. In case of reasonable doubt, entitled to acquittal.
390. When reasonable doubt of which degree he is guilty, he must be convicted of the lowest.
391. Separate trial of defendants jointly indicted
392 Rules of evidence in civil cases applicable in criminal cases, except where otherwise provided in this Code.
393. Defendant as witness.
394. Compensation of witness.
395. Confession of defendant, when evidence, and its effect.
396, 397. Evidence on trial for treason.
398. Evidence on trial for conspiracy.
399. Conviction cannot be had on testimony of accomplice, unless corroborated
400. If testimony show higher crime than that charged, court may discharge jury, and hold defendant to answer a new indictment.

SEC. 401. If new indictment not found, defendant to be tried on the original indictment.
402. Court may discharge jury, where it has not jurisdiction of the offense, or the facts do not constitute an offense.
403. Proceedings, if jury discharged for want of jurisdiction of the offense, when committed out of the state.
404-407. Proceedings in such case, when offense committed in the state.
408, 409. Proceedings, if jury discharged because the facts do not constitute an offense.
410. When evidence on either side is closed, court may advise acquittal. Effect of the advice.
411. View of premises, when ordered, and how conducted.
412. Duty of officer as to jury.
413. Knowledge of juror, to be declared in court, and juror to be sworn as witness.
414. Jurors may be permitted to separate during the trial. If kept together, oath of the officers.
415. Jurors not to converse together on the subject of the trial, nor form an opinion until the cause is submitted.
416. Proceedings, where juror becomes unable to perform his duty before conclusion of trial.
417. Court to decide questions of law arising during trial.
418. On indictment for libel, jury to determine law and fact.
419. In all other cases, court to decide questions of law, subject to right of defendant to except.
420. Charge to jury.
421. Jury may decide in court, or retire in the custody of officers; oath of the officers.
422. When defendant on bail appears for trial, he may be committed.

§ 388. In what order trial to proceed.— The jury having been impaneled and sworn, the trial must proceed in the following order:

1. The district attorney, or other counsel for the people, must open the case, and offer the evidence in support of the indictment;

2. The defendant or his counsel may then open his defense, and offer his evidence in support thereof;

3. The parties may then, respectively, offer rebutting testimony, but the court, for good reason, in furtherance of justice, may permit them to offer evidence upon their original case;

4. When the evidence is concluded, unless the case is submitted to the jury on either side, or on both sides, without argument, the defendant or his counsel must commence, and the counsel for the people conclude the argument to the jury;

5. The court must then charge the jury.

Withdrawal of juror. Peo. *v.* Barrett, 2 Cal., 304; Grant *v.* Peo., 4 Park., 527. See McFall *v.* Peo., 18 Hun, 382; Babcock *v.* Peo., 15 Hun, 347; Peo. *v.* Lopez, 2 Edm. S. C., 262.

§ 389. Defendant presumed innocent.—Reasonable doubt.—A defendant in a criminal action is presumed to be innocent, until the contrary be proved; and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to an acquittal.

Applies to mental responsibility. O'Connell *v.* Peo., 87 N. Y., 377. When burden with prisoner. Bradford *v.* Peo., 20 Hun, 309. Extent of doubt. Toole *v.* Peo., 80 N.Y., 615; Levy *v.* Peo., 80 ib., 327; Mayor *v.* Peo. ib., 364; Murphy *v.* Peo., 4 Hun, 102.

§ 390. Reasonable doubt as to degrees. — When it appears, that a defendant has committed a crime, and there is reasonable ground of doubt, in which of two or more degrees he is guilty, he can be convicted of the lowest of those degrees only.

§ 391. Separate trials on joint indictment. — When two or more defendants are jointly indicted for a felony, any defendant requiring it, must be tried separately. In other cases, defendants, jointly indicted, may be tried separately or jointly in the discretion of the court.

Where four are jointly indicted, three of them cannot insist upon the fourth being tried with them. Armsby *v.* Peo., 2 S. C., 157: Kelley *v* Peo., 55 N. Y., 565. District attorney determines order of separate trials. Patterson *v.* Peo., 46 Barb., 625. May demand after jury empanelled. 15 Hun, 347. Witnesses against each other. Peo. *v.* Satterlee, 5 Hun, 167; Taylor *v.* Peo., 12 id., 212; for each other, Peo. *v.* Dowling, 84 N. Y., 478.

§ 392. Rules of evidence.—The rules of evidence in civil cases are applicable also to criminal cases, except as otherwise provided in this Code.

§ 393. Defendant as witness.—The defendant in all cases may testify as a witness in his own behalf, but his neglect or refusal to testify does not create any presumption against him.

Cross-examination of defendant. Peo. *v.* Crapo, 76 N. Y., 288; Peo. *v.* Genet, 19 Hun, 91. See Stover *v.* Peo., 56 N. Y., 315; Newman *v.* Peo., 63 Barb., 630; Peo. *v.* Brandon, 42 N. Y., 265; Connors *v.* Peo., 50 N. Y., 240; Peo. *v.* Casey, 72 N. Y., 393; Peo. *v.* Moett, 23 Hun, 60; Peo. *v.* Greenfield, 23 Hun, 454; Maine v. Peo., 9 Hun, 113. May testify as to intent. Kerrains *v.* Peo., 60 N. Y., 221. Failure to supply evidence. Brulo *v.* Peo., 16 Hun, 119; Peo. *v.* Hovey, 29 Hun, 382; 93 N. Y., 554.

§ 394. Compensation of witness.—The rules as to the compensation of witnesses attending trials in criminal cases, prescribed by special statutes, are continued as there defined.

§ 395. Confession of defendant.—A confession of a defendant, whether in the course of judicial proceedings or to a private person, can be given in evidence against him, unless made under the influence of fear produced by threats, or unless made upon a stipulation of the district attorney, that he shall not be prosecuted therefor; but is not sufficient to warrant his conviction, without additional proof that the crime charged has been committed.

What additional proof necessary. Peo. *v.* Henessy, 15 Wend., 147; Peo. *v.* Badgley, 16 ib., 53. Silence under accusation. Peo. *v.* Kelley, 55 N. Y., 565; Willett *v.* Peo., 27 Hun, 469; s. c., 1 N. Y. Cr., 355.

§ 396. Evidence on trial for treason.—Upon a trial for treason the defendant cannot be convicted, except upon the testimony of two witnesses to the same overt act, or of one witness to one overt act, and another witness to a different overt act of the same treason. But if two or more distinct treasons, of different kinds, be alleged in the indictment, two witnesses to prove different treasons are not sufficient to warrant a conviction.

§ 397. Id.—Upon a trial for treason, evidence cannot be admitted, of an overt act not expressly charged in the indictment; nor can the defendant be convicted, unless one or more overt acts be expressly alleged therein.

§ 398. Evidence on trial for conspiracy.—Upon a trial for a conspiracy, in a case where an overt act is necessary to constitute the crime, the defendant cannot be convicted, unless one or more overt acts be expressly alleged in the indictment, nor unless one or more of the acts alleged be proved; but any other overt act, not alleged in the indictment, may be given in evidence.

1 N. Y. Cr. L., 337.

§ 399. Testimony of accomplice.—A conviction cannot be had upon the testimony of an accomplice unless he be corroborated by such other evidence as tends to connect the defendant with the commission of the crime.

See Peo. *v.* Davis, 21 Wend., 309; Peo. *v.* Costello, 1 Den., 83; Lindsay *v.* Peo., 5 Hun, 104; 63 N. Y., 143; Peo. *v.* Courtney, 28 Hun, 589; Peo. *v.* Williams, 29 Hun, 520; Peo. *v.* Ryland, 28 Hun, 568; Peo. *v.* Smith, ib., 626; Peo. *v.* Noelke, 29 Hun, 461.

§ 400. Testimony showing higher offense.—If it appear by the testimony, that the facts proved constitute a crime of a higher nature than that charged in the indictment, the court may direct the jury to be discharged, and all proceedings on the indictment to be suspended, and may order the defendant to be committed, or continued on or admitted to bail, to answer any new indictment which may be found against him for the higher offense.

§ 401. If new indictment not found, to be tried on the original.—If an indictment for the higher crime be dismissed by the grand jury, or be not found at or before the next term, the court must again proceed to try the defendant on the original indictment.

§ 402. Want of jurisdiction.—The court may also direct the jury to be discharged, where it appears that it has not jurisdiction of the crime, or that the facts, as charged in the indictment, do not constitute a crime.

§ 403. Proceedings on discharge when beyond state jurisdiction.—If the jury be discharged, because the court has not jurisdiction of the crime charged in the indictment, and it appear that it was committed out of the jurisdiction of this state, the court may order the defendant to be discharged, or to be detained for a reasonable time specified in the order, until a communication can be sent by the district attorney to the chief executive officer of the state, territory or district where the crime was committed.

§ 404. Proceedings when offense committed in the state.—If the crime were committed within the exclusive jurisdiction of another county of this state, the

court must direct the defendant to be committed for such time as it deems reasonable, to await a warrant from the proper county for his arrest; or if the crime be a misdemeanor only, it may admit him to bail, in an undertaking, with sufficient sureties, that he will, within such time as the court may appoint, appear in such court to await a warrant from the proper county for his arrest.

§ 405. Id.—In the case provided for in the last section, the clerk must forthwith give notice to the district attorney of the proper county, that the defendant has been so committed or held to bail.

§ 406. Id.—If the defendant be not arrested, as provided in section 404, on a warrant from the proper county, he must be discharged from custody, or his bail in the action be exonerated, or money deposited instead of bail refunded, as the case may be; and the sureties in the undertaking mentioned in that section must be discharged.

§ 407. Id.—If the defendant be arrested, the same proceedings must be had thereupon, as upon the arrest of a defendant in another county, on a warrant of arrest issued by a magistrate.

§ 408. Proceedings, on discharge because facts constitute no offense.—If the jury be discharged, because the facts as charged do not constitute a crime, the court must order the defendant, if in custody, to be discharged therefrom, or if admitted to bail, that his bail be exonerated, or if he have deposited money instead of bail, that the money deposited be refunded to him, unless in its opinion a new indictment can be framed, upon which the defendant can be legally convicted; in which case, it may direct that the case be re-submitted to the same or another grand jury.

Case *v.* Peo., 76 N. Y., 242.

§ 409. Id.—If the court direct that the case be submitted anew, the same proceedings must be had thereon as are prescribed in sections 318 and 319.

§ 410. Court may advise acquittal.—If, at any time after the evidence on either side is closed, the court deem it insufficient to warrant a conviction, it may advise the jury to acquit the defendant and they must follow the advice.

See Babcock v. Peo., 15 Hun 347; Case v. Peo., 6 Abb. N. C., 151; Howell v. Peo., 5 Hun., 620; 69 N. Y., 607.

§ 411. View of premises.—When, in the opinion of the court, it is proper that the jury should view the place in which the crime is charged to have been committed, or in which any material fact occurred, it may order the jury to be conducted, in a body, under charge of proper officers, to the place, which must be shown to them by a judge of the court, or by a person appointed by the court for that purpose

§ 412. Duty of officer.—The officers, mentioned in the last section, must be sworn to suffer no person to speak to or communicate with the jury, nor to do so themselves, on any subject connected with the trial, and to return them into court without unnecessary delay, or at a specified time.

§ 413. Knowledge of juror.—If a juror have any personal knowledge, respecting a fact in controversy in a cause, he must declare it in open court, during the trial. If, during the retirement of the jury, a juror declare a fact, which could be evidence in the cause, as of his own knowledge, the jury must return into court. In either of these cases, the juror making the statement must be sworn as a witness, and examined in the presence of the parties.

§ 414. Jurors may separate.—Oath of the officers.—The jurors sworn to try an indictment may, at any time before the submission of the cause to the jury, in the discretion of the court, be permitted to separate, or be kept in charge of proper officers. Such officers must be sworn to keep the jurors together until the next meet-

ing of the court, to suffer no person to speak to or communicate with them, nor to do so themselves, on any subject connected with the trial, and to return them into court at the next meeting thereof.

§ 415. Conduct of jurors during trial. — The jury must also, at each adjournment of the court, whether permitted to separate or kept in charge of officers, be admonished by the court, that it is their duty not to converse among themselves on any subject connected with the trial, or to form or express any opinion thereon, until the cause is finally submitted to them.

§ 416. Where juror becomes sick. — If, before the conclusion of the trial, a juror becomes sick, so as to be unable to perform his duty, the court may order him to be discharged, and another jury to be then or afterward impaneled.

Tiral must be had by twelve jurors and defendant cannot waive right. Cancemi *v.* Peo., 18 N. Y., 128. Sleepy juror. Peo. *v.* Morissey, 1 Sheld., 295. Exempt juror. Ib.

§ 417. Court to decide questions of law. — The court must decide all questions of law which arise in the course of the trial.

It is error to submit a question of law to the jury. Glaucus *v.* Black, 67 N. Y., 563.

§ 418. Indictment for libel. — On the trial of an indictment for libel, the jury have the right to determine the law and the fact.

Art. 1, § 8, N. Y. Const.

§ 419. In all other cases, court decides questions of law. — On the trial of an indictment for any other crime than libel, questions of law are to be decided by the court, saving the right of the defendant to except; questions of fact by the jury. And although the jury have the power to find a general verdict, which includes questions of law as well as of fact, they are bound, nevertheless, to receive as law what is laid down as such by the court.

See Peo. *v.* Pine, 2 Barb., 566.

§ 420. Charge to jury. — In charging the jury, the court must state to them, all matters of law which it thinks necessary for their information in giving their verdict; and must, if requested, in addition to what it may deem its duty to say, inform the jury that they are the exclusive judges of all questions of fact.

See Peo. *v.* Moet, 23 Hun, 60. Court may limit argument. Peo. *v.* Kelley, 2 N Y. Cr. L., 15. Cannot direct verdict of guilty. Howell *v.* Peo., 5 Hun, 620; s. c., 69 N. Y, 607. Jury may inquire as to punishment. Peo. *v.* Cassiano, 30 Hun, 388. Error how cured. Peo. *v.* Greenfield, 23 Hun, 454; s. c., 85 N. Y., 75.

§ 421. Deliberation of jury. — After hearing the charge, the jury may either decide in court, or may retire for deliberation. If they do not agree without retiring, one or more officers must be sworn, to keep them together in some private and convenient place, and not to permit any person to speak to or communicate with them, nor do so themselves, unless it be by order of the court, or to ask them whether they have agreed upon a verdict, and to return them into court when they have so agreed, or when ordered by the court.

When jury separate without authority, may be discharged and new trial had. Peo. *v.* Reagle, 60 Barb., 527.

§ 422. When defendant on bail appears for trial, he may be committed. — When a defendant, who has given bail, appears for trial, the court may, in its discretion, at any time after his appearance for trial, order him to be committed to the custody of the proper officer of the county, to abide the judgment or further order of the court; and he must be committed and held in custody accordingly.

CHAPTER II.

CONDUCT OF THE JURY, AFTER THE CAUSE IS SUBMITTED TO THEM.

SEC. 423. Room and accommodations for the jury after retirement, how provided.
424. Accommodations for the jury, when kept together during the trial, or after retirement.
425, 426. What papers the jury may take with them.
427. May return into court, for information.
428. When jury to be discharged before agreement.
429. Reason for discharge.
430. When jury discharged or prevented from giving a verdict, cause to be again tried.
431. Court may adjourn during absence of jury, as to other business, but deemed open till verdict rendered or jury discharged.
432. Final adjournment of court discharges jury.

§ 423. Accommodations for the jury. — A room must be provided by the supervisors of the county (or if the trial be in a city court, by the corporate authorities of the city), for the use of the jury, upon their retirement for deliberation, with suitable furniture, fuel, lights and stationery. If the supervisors or corporate authorities neglect this duty, the court may order the sheriff to perform it; and the expenses incurred by him in carrying the order into effect, when certified by the court, are a county charge.

Reading report of trial. Peo. *v.* Gaffney, 1 Sheld 304. Presence of officers in jury room. Peo. *v.* Draper, 28 Hun, 1; not ground for new trial.

§ 424. Food and lodging for the jury.—While the jury are kept together, either during the progress of the trial or after their retirement for deliberation, they must be provided by the sheriff, upon the order of the court, at the expense of the county (or if the trial be in a city court, at the expense of the city), with suitable and sufficient food and lodging.

§ 425. What papers the jury may take with them.—The court may permit the jury, upon retiring for deliberation, to take with them any paper or article which has been received as evidence in the cause, but only upon the consent of the defendant and the counsel for the people.

§ 426. Id.—The jury may also take with them notes of the testimony or other proceedings on the trial, taken by themselves or any of them, but none taken by any other person.

Cannot use notes of presiding judge. Mitchell *v.* Carter, 14 Hun, 448.

§ 427. Jury may return for information.—After the jury have retired for deliberation, if there be a disagreement between them, as to any part of the testimony, or if they desire to be informed of a point of law arising in the cause, they must require the officer to conduct them into court. Upon their being brought into court, the information required must be given after notice to the district attorney and to the counsel for the

defendant, and in cases of felony, in the presence of the defendant.

Instructions to jury can only be given when defendant present. Maurer *v.* Peo., 43 N. Y., 1. Communications cannot be sent to jury after retiring, even by consent. They must be brought into court. Plunkett *v.* Appleton, 51 How. Pr., 469. Magistrate cannot send answer to communication from jury. Plunkett *v.* Appleton, 9 J. & Sp., 159; Gillotte *v.* Jackson, ib., 308. See also Mahoney *v.* Decker, 18 Hun, 365; Peo. *v.* Cassiano, 30 Hun, 388; Peo. *v.* Kelly, 2 N. Y. C. R., 15.

§ 428. When jury to be discharged before agreement.—After the jury have retired to consider of their verdict, they can be discharged before they shall have agreed thereon only in the following cases:

1. Upon the occurrence of some injury or casualty affecting the defendant, the jury or some one of them, or the court, rendering it inexpedient to keep them longer together; or

2. When after the lapse of such time as shall seem reasonable to the court, they shall declare themselves unable to agree upon a verdict; or

3. When with the leave of the court, the public prosecutor and the counsel for the defendant consent to such discharge.

It is error for the court to constrain jury by saying they must agree or no discharge. Slater *v.* Mead, 53 How. Pr., 57. See Berry *v.* Peo., 1 N. Y. Cr., 43, 57.

§ 429. Reason for discharge.—Whenever the jury is discharged without a verdict, the reason for the discharge must be entered on the minutes.

§ 430. When no verdict, cause to be re-tried.—In all cases where a jury are discharged, or prevented from giving a verdict, by reason of an accident or other cause, except where the defendant is discharged from the indictment, during the progress of the trial, or after the cause is submitted to them, the cause may be again tried at the same or another term.

§ 431. How court may adjourn.—While the jury are absent, the court may adjourn from time to time, as to other business; but it is nevertheless deemed open, for every purpose connected with the cause submitted to the jury, until a verdict is rendered or the jury discharged.

§ **432. Final adjournment discharges jury.**—A final adjournment of the court discharges the jury, but any term of a court may be continued for the purpose of finishing a trial or receiving a verdict.

CHAPTER III.

THE VERDICT.

SEC. 433. When the jury have agreed, to be brought into court and their names called. If all do not appear, jury to be discharged and cause again tried.
434. In felony, defendant must be present. In misdemeanor, verdict may be rendered in his absence.
435. Manner of taking the verdict.
436. Verdict may be general or special.
437. General verdict.
438. Special verdict.
439, 440. Special verdict, how rendered.
441. Special verdict, how brought to argument.
442. Judgment thereon.
443. When special verdict defective, new trial to be ordered.
444. Upon indictment for crime consisting of different degrees, jury may convict of any degree, or of any attempt to commit the crime.
445. In other cases, jury may convict of any offense necessarily included in that charge.
446. On indictment against several, jury may render a verdict as to some, and the cause be again tried as to the others.
447, 448. In what cases court may direct a reconsideration of the verdict.
449. When judgment may be given upon an informal verdict.
450. Polling the jury.
451. Recording the verdict.
452. Defendant, when to be discharged or detained after acquittal.
453. Proceedings upon general verdict of conviction, or a special verdict.
454. When defendant acquitted on the ground of insanity, the fact to be stated with the verdict. Commitment of defendant to state lunatic asylum.

§ **433. Jury after agreement.**—When the jury have agreed upon their verdict, they must be conducted into court by the officer having them in charge. Their names must then be called, and if all do not appear, the rest must be discharged without giving a verdict. In that event, the cause may be again tried, at the same or another term.

§ 434. When defendant must be present.—If the indictment be for a felony, the defendant must, before the verdict is received, appear in person. If it be for a misdemeanor, the verdict may be rendered in his absence.

§ 435. Manner of taking the verdict. — If the jury appear, they must be asked by the court or the clerk, whether they have agreed upon their verdict; and if the foreman answer in the affirmative, they must, on being required, declare the same.

Verdict cannot be received in absence of justices. Hinman *v.* Peo., 13 Hun, 266.

§ 436. Verdict may be general or special.— The jury may either render a general verdict, or when they are in doubt as to the legal effect of the facts proved, they may, except upon an indictment for libel, find a special verdict.

Under general verdict of guilty, sentence for the highest offense charged in indictment is proper. Hawker *v.* Peo., 75 N. Y., 487. See Peo. *v.* Bork, 1 N. Y. Cr., 393. Special verdict. Miller *v.* Peo., 25 Hun, 473.

§ 437. General verdict.—A general verdict upon a plea of not guilty is either "guilty" or "not guilty;" which imports a conviction or acquittal of the offense charged in the indictment. Upon a plea of a former conviction or acquittal of the same offense, it is either "for the people," or "for the defendant."

§ 438. Special verdict.—A special verdict is that by which the jury find the facts only, leaving the judgment to the court. It must present the conclusions of fact, as established by the evidence, and not the evidence to prove them; and these conclusions of fact must be so presented, as that nothing remains to the court, but to draw from them conclusions of law.

Miller *v.* Peo., 25 Hun, 473.

§ 439. Id.; how rendered. — The special verdict must be reduced to writing, by the jury or in their presence, entered upon the minutes of the court, read to the jury, and agreed to by them, before they are discharged.

§ 440. Id.; form.— The special verdict need not be in any particular form, but is sufficient, if it present intelligibly the facts found by the jury.

§ 441. Id.; how brought to argument.— The special verdict may be brought to argument by either party, upon five days' notice to the other, at the same or another term of the court; and upon the hearing thereof, the counsel for the defendant may conclude the argument.

§ 442. Judgment thereon. — The court must give judgment upon the special verdict, as follows:

1. If the plea be not guilty, and the facts prove the defendant guilty of the offense charged in the indictment, or of any other offense of which he could be convicted, under that indictment, as provided in sections 444 and 445, judgment must be given accordingly; but if otherwise, judgment of acquittal must be given;

2. If the plea be a former conviction or acquittal of the same offense, the court must give judgment of conviction or acquittal, according as the facts prove or fail to prove the former conviction or acquittal.

§ 443. Defective special verdict.— If the jury do not, in a special verdict, pronounce affirmatively or negatively on the facts necessary to enable the court to give judgment, or if they find the evidence of facts merely, and not the conclusions of fact from the evidence, as established to their satisfaction, the court must order a new trial.

§ 444. Conviction for any lower degree, or of an attempt.—Upon an indictment for a crime consisting of different degrees, the jury may find the defendant not guilty of the degree charged in the indictment, and guilty of any degree inferior thereto, or of an attempt to commit the crime.

Petit larceny on indictment for grand. Peo. *v.* McTameny, 17 W. D., 492.

§ 445. Offenses necessarily included.—In all other cases, the defendant may be found guilty of any crime,

the commission of which is necessarily included in that with which he is charged in the indictment.

See Peo. *v.* Jackson, 3 Hill, 92.

§ 446. On joint trial, jury may render a verdict as to some.—On an indictment against one or more, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment must be entered accordingly; and the case, as to the rest, may be tried by another jury.

§ 447. When court may direct a reconsideration of the verdict.—When there is a verdict of conviction, in which it appears to the court that the jury have mistaken the law, the court may explain the reason for that opinion, and direct the jury to reconsider their verdict; and if, after the reconsideration, they return the same verdict, it must be entered. But when there is a verdict of acquittal, the court cannot require the jury to reconsider it.

§ 448. Id.—If the jury render a verdict which is neither a general nor a special verdict, as defined in sections 437 and 438, the court may, with proper instructions as to the law, direct them to reconsider it; and it cannot be recorded, until it be rendered in some form, from which it can be clearly understood what is the intent of the jury, whether to render a general verdict, or to find the facts specially, and leave the judgment to the court.

§ 449. Judgment upon an informal verdict.—If the jury persist in finding an informal verdict, from which, however, it can be clearly understood, that their intention is to find in favor of the defendant, upon the issue, it must be entered in the terms in which it is found, and the court must give judgment of acquittal. But no judgment of conviction can be given, unless the jury expressly find against the defendant, upon the issue, or judgment be given against him on a special verdict.

§ 450. Polling the jury.—When a verdict is rendered, and before it is recorded, the jury may be polled, on the requirement of either party; in which case, they must be severally asked whether it is their verdict; and if any one answer in the negative, the jury must be sent out for further deliberation.

§ 451. Recording the verdict.—When the verdict is given, and is such as the court may receive, the clerk must immediately record it in full upon the minutes, and must read it to the jury and inquire of them whether it is their verdict. If any juror disagee, the fact must be entered upon the minutes, and the jury again sent out; but if no disagreement be expressed, the verdict is complete, and the jury must be discharged from the case.

§ 452. Discharge or detention after acquittal.—If judgment of acquittal be given on a general verdict, and the defendant be not detained for any other legal cause, he must be discharged as soon as the judgment is given; except that when the acquittal is for a variance between the proof and the indictment, which may be obviated by a new indictment, the court may order his detention, to the end that a new indictment may be preferred, in the same manner and with the like effect as provided in sections 408 and 409.

§ 453. Proceedings upon verdict.—If a general verdict be rendered against the defendant, or a special verdict be given, he must be remanded, if in custody, or if on bail, he may be committed to the proper officer of the county, to await the judgment of the court upon the verdict. When committed, his bail is exonerated, or if money be deposited instead of bail, it must be refunded to the defendant.

§ 454. Acquittal on the ground of insanity.—When the defense is insanity of the defendant the jury must be instructed, if they acquit him on that ground, to state

the fact with their verdict. The court must, thereupon, if the defendant be in custody, and they deem his discharge dangerous to the public peace or safety, order him to be committed to the state lunatic asylum, until he becomes sane.

TITLE VIII.

Of the Proceedings after Trial and before Judgment.

CHAPTER I. Bill of exceptions.
II. New trials.
III. Arrest of judgment.

CHAPTER I.

BILL OF EXCEPTIONS.

SEC. 455. In what cases.
456. By whom settled, and how filed.
457. To be settled at the trial, or the point noted in writing.
458, 459. When and how settled, after the trial.
460. Enlarging the time therefor.
461. Effect of not serving exceptions or amendments, within the time prescribed.

§ 455. In what cases.—On the trial of an indictment, exceptions may be taken by the defendant, to a decision of the court, upon a matter of law, by which his substantial rights are prejudiced and not otherwise, in any of the following cases:

1. In disallowing a challenge to the panel of the jury;

2. In admitting or rejecting testimony on the trial of a challenge for actual bias to any juror who participated in the verdict, or in allowing or disallowing such challenge;

3. In admitting or rejecting witnesses or testimony, or in deciding any question of law, not a matter of discretion, or in charging or instructing the jury upon the law, on the trial of the issue.

§ 456. How settled and filed.—A bill containing the exceptions must be settled and signed by the presiding judge, and filed with the clerk.

§ 457. When to be settled.—The bill of exceptions must be settled at the trial unless the court otherwise direct. If no such direction be given, the point of the exception must be particularly stated in writing, and delivered to the court, and must immediately be corrected or added to, until it is made conformable to the truth.

§ 458. When and how settled, after the trial.—If the bill of exceptions be not settled at the trial it must be prepared and served, within five days thereafter, on the district attorney, who may, within five days, serve on the defendant or his counsel, amendments thereto. The defendant may then, within five days, serve the district attorney with a notice to appear before the presiding judge of the court, at a specified time, whether in or out of court, not less than five nor more than ten days thereafter, to have the bill of exceptions settled.

§ 459. Id.—At the time appointed, the judge must settle and sign the bill of exceptions.

§ 460. Enlarging the time therefor.—The time for preparing the bill of exceptions or the amendments thereto, or for settling the same, may be enlarged by consent of the parties, or by the presiding judge, or by a judge of the supreme court, but by no other officer.

§ 461. Failure to serve exceptions or amendments.—If the bill of exceptions be not served within the time prescribed in section 458, or within the enlarged time therefor, as prescribed in the last section, the exceptions are deemed abandoned. If it be served, and the parties omit, within the time limited by section 458, the one to prepare amendments, and the other to give notice of appearance before the judge, they are respectively deemed, the one to have agreed to the bill of exceptions, and the other to the amendments.

CHAPTER II.

NEW TRIALS.

SEC. 462. New trial.
463. When granted.
464. Effect of granting new trial.
465. In what cases granted.
466. Application, when to be made.

§ 462. New trial.—A new trial is a re-examination of the issue, in the same court, before another jury, after a verdict has been given.

§ 463. When granted.—A new trial can be granted by the court in which the former trial was had, only in the cases provided in section 465.

§ 464. Effect of granting new trial.—The granting of a new trial places the parties in the same position as if no trial had been had. All the testimony must be produced anew; and the former verdict cannot be used or referred to, either in evidence or in argument.

§ 465. When granted.—The court in which a trial has been had upon an issue of fact has power to grant a new trial, when a verdict has been rendered against the defendant, by which his substantial rights have been prejudiced, upon his application, in the following cases:

1. When the trial has been had in his absence, if the indictment be for a felony;

2. When the jury has received any evidence out of court, other than that resulting from a view, as provided in section 411;

3. When the jury have separated without leave of the court, after retiring to deliberate upon their verdict, or have been guilty of any misconduct by which a fair and due consideration of the case has been prevented;

4. When the verdict has been decided by lot, or by any means other than a fair expression of opinion on the part of all the jurors;

5. When the court has misdirected the jury in a matter of law, or has refused to instruct them as prescribed

in section 420; and the defendant has, at the trial, excepted to such misdirection or refusal;

6. When the verdict is contrary to law or clearly against evidence;

7. When it is made to appear, by affidavit, that upon another trial, the defendant can produce evidence such as if before received would probably have changed the verdict; if such evidence has been discovered since the trial, is not cumulative; and the failure to produce it on the trial was not owing to want of diligence.

Peo. *v.* Lane, 1 N. Y. C. L., 548.

§ 466. Application, when to be made.—The application for a new trial must be made before judgment except in case of a sentence of death when the application may be made at any time before execution and in case the court before which the trial was had is not in session so that the application can be made and determined before the execution then the application may be made to any justice of the supreme court or special term thereof, within the judicial department where the conviction was had.

CHAPTER III.

ARREST OF JUDGMENT.

SEC. 467. Motion in arrest of judgment, defined, and upon what defects founded.
468. Court may arrest judgment without motion.
469. Motion, when and how made.
470. Defendant when to be held or discharged.

§ 467. Motion in arrest of judgment.— A motion in arrest of judgment is an application, on the part of the defendant, that no judgment be rendered on a plea or verdict of guilty, or on a verdict against the defendant upon the plea of a former conviction or acquittal. It may be founded on any of the defects in the indictment, mentioned in section 331.

Motion in arrest is not confined to indictment, but may include whole record. Peo. *v.* Bruno, 6 Park., 657. It cannot bring up a variance between proof and indictment. Peo. *v.* Onondaga Gen. Sess., 1 Wend., 296. Nor mistakes of the court on trial, or of the jury in giving verdict. Peo. *v.* Thompson, 41 N. Y., 1; Peo. *v.* Allen, 43 ib., 28. Can only be made for defects on the record. Jacobowsky *v.* Peo., 6 Hun, 524; 64 N. Y., 659.

§ 468. Court may arrest judgment without motion.— The court may also, on its own view of any of these defects, arrest the judgment without motion.

§ 469. Motion when and how made.—The motion must be made, before or at the time when the defendant is called for judgment. If made before, it must be on notice to the district attorney, or in his presence.

§ 470. Defendant, when to be held or discharged.—When judgment is arrested, and it appears that there is not evidence sufficient to convict the defendant of any crime, he must, if in custody, be discharged; or, if under bail, his bail must be exonerated; or, if money has been deposited instead of bail, it must be refunded; and in such case the arrest of judgment operates as an acquittal of the charge upon which the indictment was found; but, if there is reasonable ground to believe the defendant guilty, and a new indictment can be framed upon which he may be convicted, the court may order him to be re-committed or admitted to bail anew to answer the new indictment; if there is reasonable ground to believe him guilty of another crime, he must be committed or held to answer therefor; and in no case, when re-committed or held to answer, is the former verdict a bar to a new indictment.

Dowling *v.* Peo., 84 N. Y., 478.

TITLE IX.

Of the Judgment and Execution.

CHAPTER I. The judgment.
II. The execution.

CHAPTER I.

THE JUDGMENT.

SEC. 471, 472. Time for pronouncing judgment, to be appointed by the court.
473. In felony, defendant must be present. In misdemeanor, judgment may be pronounced in his absence.
474. When defendant is in custody, how brought before the court for judgment.
475. How brought before the court, when he is on bail.
476. Bench warrant to issue.
477. Form of bench warrant
478, 479. Service of the bench warrant.

SEC. 480. Arraignment of defendant for judgment.
481. What cause may be shown against the judgment.
482. If no sufficient cause shown, judgment to be pronounced.
483. Court may summarily inquire into circumstances in aggravation or mitigation of punishment.
484. Judgment to pay fine.
485. The Judgment roll.

§ 471. Time for pronouncing judgment, to be appointed by the court.—After a plea or verdict of guilty, or after a verdict against the defendant on a plea of a former conviction or acquital, if the judgment be not arrested, or a new trial granted, the court must appoint a time for pronouncing judgment.

§ 472. Id.—The time appointed must be at least two days after the verdict, if the court intend to remain in session so long, or if not, as remote a time as can reasonably be allowed; but any delay may be waived by the defendant.

§ 473. Appearance.—For the purpose of judgment, if the conviction be for a felony, the defendant must be personally present; if it be for a misdemeanor, judgment may be pronounced in his absence.

§ 474. Defendant in custody, to be brought before the court.—When the defendant is in custody, the court may direct the officer in whose custody he is, to bring him before it for judgment; and the officer must do so accordingly.

§ 475. When on bail.—If the defendant have been discharged on bail, or have deposited money instead thereof, and do not appear for judgment, when his personal attendance is necessary, the court, in addition to the forfeiture of the undertaking of bail or of the money deposited, may direct the clerk to issue a bench warrant for his arrest.

§ 476. Bench warrant to issue.—The clerk, on the application of the district attorney, may accordingly, at any time after the order, whether the court be sitting or not, issue a bench warrant into one or more counties.

§ 477. Form of bench warrant.—The bench warrant must be substantially in the following form:

"County of *Albany*, [or as the case may be.]

"In the name of the people of the State of New York—

"To any sheriff, constable, marshal or policeman in this state. A. B. having been [SEAL.] on the day of , 18 , duly convicted in the *court of sessions of the county of Albany* (or as the case may be), of the crime of [designating it generally.]

"You are therefore commanded, forthwith to arrest the above named A. B., and bring him before that court for judgment; or if the court have adjourned for the term, you are to deliver him into the custody of the sheriff of the county of *Albany*, [or as the case may be, or in the city and county of New York "to the keeper of the city prison of the city of New York."]

"City of *Albany*, [or as the case may be] the day of , 18 .

"By order of the court.

"E. F., clerk."

§ 478. Service of the bench warrant.—The bench warrant may be served in any county, in the same manner as a warrant of arrest; except that when served in another county it need not be indorsed by a magistrate of that county.

§ 479. Id.—Whether the bench warrant be served in the county in which it was issued, or in another county, the officer must arrest the defendant and bring him before the court, or commit him to the officer mentioned in the warrant, according to the command thereof.

§ 480. Arraignment for judgment. — When the defendant appears for judgment, he must be asked by the clerk whether he have any legal cause to show, why judgment should not be pronounced against him.

In capital cases this must appear upon the record. Graham *v.* Peo., 63 Barb., 468; 6 Lans., 149; see Messner *v.* Peo., 45 N. Y., 1; Hilderbrand *v.* Peo., 1 Hun, 19; aff'd 56 N. Y., 394.

§ 481. What may be shown against the judgment. — He may show for cause, against the judgment,

1. That he is insane; and if, in the opinion of the court, there be reasonable ground for believing him to be insane, the question of his insanity must be tried as provided by this Code. If, upon the trial of that question, it is found that he is sane, judgment must be pronounced; but if found insane, he must be committed to the state lunatic asylum until he becomes sane; and when notice is given of that fact, he must be brought before the court for judgment;

2. That he has good cause to offer, either in arrest of judgment, or for a new trial; in which case the court may, in its discretion, order the judgment to be deferred, and proceed to decide upon the motion in arrest of judgment or for a new trial.

§ 482. Judgment. — If no sufficient cause be alleged, or appear to the court, why judgment should not be pronounced, it must thereupon be rendered.

On a plea of guilty, court may give a general judgment applicable to any count. Polinsky *v.* Peo., 11 Hun, 390; 73 N. Y., 65.

§ 483. Inquiry into circumstances touching punishment. — After a plea or verdict of guilty, in a case where a discretion is conferred upon the court as to the extent of the punishment, the court, upon the suggestion of either party, that there are circumstances, which may be properly taken into view, either in aggravation or mitigation of the punishment, may, in its discretion, hear the same summarily at a specified time, and upon such notice to the adverse party as it may direct.

§ 484. Judgment to pay fine. — A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine be satisfied, specifying the extent of the imprisonment; which cannot exceed one day for every one dollar of the fine.

§ 485. The judgment roll — When judgment upon a conviction is rendered, the clerk must enter the same

upon the minutes, stating briefly the offense for which the conviction has been had; and must, upon the service upon him of notice of appeal, immediately annex together and file the following papers, which constitute the judgment roll:

1. A copy of the minutes of a challenge interposed by the defendant to a grand juror, and the proceedings and decision thereon;

2. The indictment, and a copy of the minutes of the plea or demurrer;

3. A copy of the minutes of a challenge, which may have been interposed to the panel of the trial jury, or to a juror, who participated in the verdict, and the proceedings and decision thereon;

4. A copy of the minutes of the trial;

5. A copy of the minutes of the judgment;

6. A copy of the minutes of any proceedings upon a motion either for a new trial or in arrest of judgment;

7. The bill of exceptions, if there be one.

Not to contain names or testimony of witnesses. Peo., etc. *v.* Nelson, 16 Hun, 214.

CHAPTER II.

THE EXECUTION.

SEC. 486. Authority for the execution of a judgment, except of death.
487. Commitment of the defendant.
488. Judgment of imprisonment, by whom and how executed.
489. Duty of Sheriff.
490. Same.

§ 486. Authority for the execution of a judgment. — When a judgment, except of death, has been pronounced, a certified copy of the entry thereof upon the minutes must be forthwith furnished to the officer whose duty it is to execute the judgment; and no other warrant or authority is necessary to justify or require its execution.

§ 487. Commitment of defendant. — If the judgment be imprisonment, or a fine and imprisonment until it be paid, the defendant must forthwith be committed to the custody of the proper officer, and by him detained, until the judgment be complied with.

Imprisonment before sentence does not apply. Peo. *v.* Warden, etc., 66 N. Y., 342. Misdemeanors. Peo. *v.* Lincoln, 25 Hun, 306, overruling Peo. *v.* McEwen, 62 How. Pr., 226.

§ 488. Judgment of imprisonment, by whom and how executed. — When the judgment is imprisonment in a county jail, or a fine and that the defendant be imprisoned until it be paid, the judgment must be executed by the sheriff of the county. In all other cases, when the sentence is imprisonment, the sheriff of the county must deliver the defendant to the proper officer, in execution of the judgment.

§ 489. Duty of sheriff. — If the judgment be imprisonment, except in a county jail, the sheriff must deliver a copy of the entry of the judgment upon the minutes of the court, together with the body of the defendant, to the keeper of the prison, in which the defendant is to be imprisoned.

§ 490. Sheriff may require aid. — The sheriff or his deputy, while conveying the defendant to the proper prison, in execution of a judgment of imprisonment, has the same authority to require the assistance of any citizen of this state, in securing the defendant, and in retaking him if he escape, as if the sheriff were in his own county; and every person who refuses or neglects to assist the sheriff, when so required, is punishable, as if the sheriff were in his own county.

TITLE X.

General Provisions in Relation to the Punishment of Crimes.

CHAPTER. I. The death penalty.
II. Second offenses, habitual criminals, and special penal discipline.

CHAPTER I.

THE DEATH PENALTY.

SEC. 491. Warrant for execution of convict.
492. Time of execution.
493. Judge must transmit certain papers to governor.
494. Governor may consult judges, etc.

SEC. 495. Governor only to reprieve, etc., except as provided in the following sections.
496. If convict becomes insane, sheriff to impanel jury.
497. Duty of district attorney.
498. Inquisition; suspension of execution.
499. Sheriff to transmit inquisition to governor; governor's duty.
500. If female convict is pregnant, sheriff to impanel jury of physicians.
501. Inquisition; suspension of execution.
502. Sheriff to transmit inquisition to governor; governor's duty.
503. When day of execution has passed, convict to be brought up by warrant.
504. Court to inquire, etc.; when to direct execution.
505. Death penalty; mode of infliction.
506. Id.; where inflicted.
507. Id.; who to be present.
508. Id.; certificate after execution.
509. Id.; when inflicted by sheriff in an adjoining county.

§ 491. Death warrant. — When a defendant is sentenced to the punishment of death, the judge or judges holding the court at which the conviction takes place, or a majority of them, of whom the judge presiding must be one, must make out, sign and deliver to the sheriff of the county, a warrant, stating the conviction and sentence, and appointing the day upon which the sentence must be executed.

§ 492. Time of execution. — The day so appointed must be not less than four weeks and not more than eight weeks after the sentence.

Execution may take place before expiration of a previous sentence. Thomas *v.* Peo., 67 N. Y., 218.

§ 493. Judge must transmit papers to governor. — The judge, presiding at the term at which the conviction took place, must immediately thereupon transmit to the governor a statement of the conviction and sentence, with the notes of testimony taken upon the trial by him or the notes, written out, taken by a stenographer or assistant stenographer, attending the court or term pursuant to law.

§ 494. Governor may consult judges, etc. — The governor is authorized to require the opinion of the

judges of the court of appeals, justices of the supreme court, and the attorney-general, or of any of them, upon a statement so furnished.

§ 495. **Governor only to reprieve, except, etc.** — No judge, court, or officer, other than the governor, can reprieve or suspend the execution of a defendant sentenced to the punishment of death, except where a sheriff is authorized so to do, in a case and in the manner prescribed in the following sections of this chapter. This section does not apply to a stay of proceedings upon an appeal or writ of error.

§ 496. **Insane convicts.** — If, after a defendant has been sentenced to the punishment of death, there is reasonable ground to believe that he has become insane, the sheriff of the county in which the conviction took place, with the concurrence of a justice of the supreme court, or the county judge of the county, who may make an order to that effect, must impanel a jury of twelve persons of that county, qualified to serve as jurors in a court of record, to examine the question of the sanity of the defendant. The sheriff must give at least seven days' notice of the time and place of the meeting of the jury to the district attorney of the county. Section 108 of the Code of Civil Procedure regulates the impaneling of such a jury, and the proceedings upon the inquisition so far as it is applicable.

§ 497. **Duty of district attorney.** — The district attorney must attend the inquiry. He may produce witnesses before the jury; for which purpose he has the same power to issue subpœnas, as for witnesses to attend a grand jury, and disobedience thereto may be punished by the court of oyer and terminer for that county, at any term thereof, in the same manner as disobedience to process issued by that court.

§ 498. **Inquisition; suspension of execution.** — The inquisition of the jury must be signed by the jurors and the sheriff. If it be found by the inquisition that

the defendant is insane, the sheriff must suspend execution of the warrant directing the defendant's death, until he receives a warrant from the governor, directing that the defendant be executed.

§ 499. Sheriff to transmit inquisition to governor; governor's duty.—The sheriff must immediately transmit the inquisition to the governor; who, as soon as he is satisfied of the sanity of the defendant, or of his restoration to sanity, must issue his warrant, appointing a time and place for the execution of the latter, pursuant to his sentence, unless the sentence is commuted or the convict pardoned, and may in the meantime give directions for the disposition and custody of the defendant.

§ 500. If female convict is pregnant.—If there is reasonable ground to believe that a female defendant, sentenced to the punishment of death, is pregnant, the sheriff of the county where the conviction took place must impanel a jury of six physicians to inquire into her pregnancy. Sections 497 and 498 of this Code apply to the proceedings upon the inquisition, except that the sheriff may, in his discretion, require one or more of the physicians composing the jury to attend from an adjoining county. A physician, acting as a juror upon such an inquisition, need not be qualified to serve as a juror in a court of record.

§ 501. Suspension of execution.—The inquisition of the jury must be signed by the jurors and the sheriff. If it is found by the inquisition that the defendant is quick with child, the sheriff must suspend the execution of the warrant directing her execution, until he receives a warrant from the governor, directing that the convict be executed.

§ 502. Sheriff to transmit inquisition to governor; governor's duty.—The sheriff must immediately transmit the inquisition to the governor, who, as soon as he is satisfied that the defendant is no longer quick with child, may issue his warrant, appointing a time and place for her execution, pursuant to her sentence, or may commute her punishment to imprisonment for life.

§ 503. When day of execution has passed.—Whenever, for any reason, other than insanity or pregnancy, a defendant, sentenced to the punishment of death, has not been executed pursuant to the sentence, at the time specified thereby, and the sentence or the judgment inflicting the punishment stands in full force, the supreme court, or a justice thereof, upon application by the attorney-general, or of the district attorney of the county where the conviction was had, must make an order, directed to the sheriff, commanding him to bring the convict before a general term of the supreme court in the department, or a term of a court of oyer and terminer in the county, where the conviction was had. If the defendant be at large, a warrant may be issued by the supreme court, or a justice thereof, directing any sheriff or other officer to bring the defendant before the supreme court at a general term thereof, or before a term of the court of oyer and terminer, in that county.

Moett v. Peo., 85 N. Y., 373.

§ 504. Court to inquire, etc.; when to direct execution.—Upon the defendant being brought before the court, it must inquire into the circumstances, and if no legal reason exists against the execution of the sentence, it must issue its warrant to the sheriff of the proper county, under the hands of the judge or judges, or of a majority of them, of whom the judge presiding must be one, commanding the sheriff to do execution of the sentence, upon a day appointed therein. The warrant must be obeyed by the sheriff accordingly.

§ 505. Death penalty; mode of infliction.—The punishment of death must in every case be inflicted by hanging the convict by the neck until he is dead.

§ 506. Id.; where inflicted.—The punishment of death must be inflicted within the walls of the prison of the county in which the conviction of the person sentenced took place, or within a yard or inclosure adjoining thereto. For the purposes of this section, the "prison" is defined to be the jail appointed by law for

the confinement of convicts awaiting execution of their sentence.

§ 507. Id.; Who to be present.—It is the duty of the sheriff or under-sheriff of the county to be present at the execution, and to invite the presence, by at least three days' previous notice, of the county judge, district attorney, clerk and surrogate of the county, together with two physicians, and twelve reputable citizens of full age, to be selected by the sheriff or under-sheriff. The sheriff or under-sheriff must, at the request of the criminal, permit such ministers of the gospel, priests or clergymen of any religious denomination, not exceeding two, and such of the immediate relatives of the convict as he desires, being of full age, to be present at the execution; and such officers of the prison, deputy sheriffs, and constables or marshals must attend, as the sheriff or under-sheriff deems expedient to have present. Besides the persons designated in this section, no one shall be permitted to be present at the execution.

§ 508. Id.; certificate after execution.—The sheriff or under-sheriff attending the execution must prepare and sign a certificate, setting forth the time and place thereof, and that the convict was then and there executed, in conformity to the sentence of the court, and the provisions of this Code and must procure the certificate to be signed by the county judge, surrogate and district-attorney, if they were present, and by the physicians and citizens selected by the sheriff who witnessed the execution. He must cause the certificate to be filed in the office of the clerk of the county

§ 509. Id.; When inflicted by sheriff in an adjoining county.—If in any county there is not a county jail for the confinement of criminal prisoners, or the jail has become unfit or unsafe for the confinement of prisoners, or is destroyed by fire or otherwise, and the county judge of the county has, according to law, designated the jail of a contiguous county for the confinement of the prisoners of the county, the sheriff of the county in

which a convict sentenced to death is confined must attend, upon the day appointed for the execution of the sentence, at the jail of his county, and there conduct the proceedings and execute the sentence, in all respects as if the jail were situated in the county where the conviction took place.

CHAPTER II.

SECOND OFFENSES, HABITUAL CRIMINALS AND SPECIAL PENAL DISCIPLINE.

SEC. 510. When convict may be adjudged an habitual criminal.
511. Judgment accordingly, how entered, etc.
512. Persons so adjudged when liable to arrest and punishment.
513. Id.; evidence of character on subsequent trial.
514. Id.; always liable to search, etc.

§ 510. When convict may be adjudged an habitual criminal.—When a person is hereafter convicted of a felony, who has been, before that conviction, convicted in this state of any other crime, he may be adjudged by the court, in addition to other punishment inflicted upon him, to be an habitual criminal. A person convicted of a misdemeanor, who has been already five times convicted in this state of a misdemeanor may be adjudged by the court in addition to, or instead of, other punishment, to be an habitual criminal.

See Peo. *v.* McCarthy, 45 How. Pr., 97.

§ 511. Judgment accordingly, how entered, etc.—The judgment specified in the last section must be entered in a separate book, kept for that purpose. A copy of the entry, duly certified by the clerk of the court, is proof of the judgment, and a copy, so certified, must be forthwith transmitted to the police department of each city, and to the district attorney of each county in the state.

§ 512. Persons so adjudged when liable to arrest and punishment.—A person who has been adjudged an habitual criminal is liable to arrest summarily with or without warrant, and to punishment as a disorderly

person, when he is found without being able to account therefor, to the satisfaction of the court or magistrate, either,

1. In possession of any deadly or dangerous weapon, or of any tool, instrument or material, adapted to, or used by criminals for, the commission of crime, or

2. In any place or situation, under circumstances giving reasonable ground to believe that he is intending or waiting the opportunity to commit some crime.

Not entitled to jury trial. Peo. *v.* McCarthy, 45 How. Pr., 97.

§ 513. Id.; evidence of character on subsequent trial. — A person who, having been adjudged an habitual criminal, is charged with a crime committed thereafter, may be described in the complaint, warrant or indictment therefor, as an habitual criminal; and, upon proof that he has been adjudged to be such, the prosecution may introduce, upon the trial or examination, evidence as to his previous character, in the same manner and to the same extent as if he himself had first given evidence of his character and put the same in issue.

§ 514. Id.; always liable to search, etc. — The person and the premises of every one who has been convicted and adjudged an habitual criminal shall be liable at all times to search and examination by any magistrate, sheriff, constable, or other officer, with or without warrant.

Is forcible examination of person constitutional, *Quære.* See Peo. *v.* McCoy, 45 How. Pr., 216.

TITLE XI.

Of Appeals.

CHAPTER I. Appeals, when allowed, and how taken.
II. Dismissing an appeal, for irregularity.
III. Argument of the appeal.
IV. Judgment upon appeal.

CHAPTER I.

APPEALS, WHEN ALLOWED, AND HOW TAKEN.

SEC. 515. Writs of error and of certiorari, abolished; appeal substituted.
516. Parties, how designated on appeal.
517. In what cases appeal may be taken by defendant.
518. In what cases, by the people.
519. In what cases, generally.
520. Appeal, a matter of right.
521. Must be taken within one year after judgment.
522–525. Appeal, how taken.
526. Appeal by the people, not to stay or effect the judgment until reversed.
527. Stay of proceedings, on appeal to supreme court from judgment of conviction.
528. Stay, upon appeal to court of appeals from judgment of supreme court, affirming judgment of conviction.
529. Certificate of stay not to be granted, but on notice to district attorney.
530, 531. Effect of the stay.
532. Transmitting the papers to the appellate court.

§ 515. Writs of error and certiorari abolished; appeal substituted.—Writs of error and of certiorari in criminal actions *and proceedings and special proceedings of a criminal nature*, as they have heretofore existed, are abolished; and hereafter the only mode of reviewing a judgment or order in a criminal action *or proceeding, or special proceeding of a criminal nature*, is by appeal. [Am'd ch. 372 of 1884]

Peo. etc. *v.* Carney, 1 N. Y. Cr., 270; Peo. *v.* Burleigh, 1 N. Y. Cr., 447.

§ 516. Parties, how designated on appeal.—The party appealing is known as the appellant, and the adverse party as the respondent. But the title of the action is not changed, in consequence of the appeal.

§ 517. When defendant may appeal.— An appeal to the supreme court may be taken by the defendant, from the judgment on a conviction after indictment, and upon the appeal, any actual decision of the court in an intermediate order or proceeding forming a part of the judgment roll, as prescribed by section 485, may be reviewed.

Supreme Court has no jurisdiction on appeal except as given by statutes. Shufflin *v.* Peo., 4 Hun, 16. Appeal in criminal contempt. Peo. *v.* Dwyer, 90 N. Y., 402; s. c., 27 Hun, 548; Peo. *v.* Gilmore, 88 N. Y., 626. Order denying motion in arrest of judgement appealable. Peo. *v.* Bork, 1 N. Y. Cr., 393.

§ 518. When the people may.—An appeal to the supreme court may be taken by the people in the following cases and no other:

1. Upon a judgment for the defendant, on a demurrer to the indictment.

2. Upon an order of the court, arresting the judgment.

A new trial cannot be granted, when defendant has been acquitted of a felony. Peo. *v.* Comstock, 8 Wend., 549. See Peo. *v.* Corning, 2 N. Y., 9.

§ 519. In what cases generally.—An appeal may be taken from the judgment of the supreme court to the court of appeals, in the following cases, and no other:

1. From a judgment affirming or reversing a judgment of conviction;

2. From a judgment affirming or reversing a judgment for the defendant, on a demurrer to the indictment, or on an order of the court arresting the judgment.

3. From a final determination affecting the substantial right of a defendant.

Are preferred causes. Rule 11, Ct. App., and first in order. Rule 20, id.

§ 520. Appeal, a matter of right.—All appeals, provided for in this chapter, may be taken as a matter of right.

§ 521. When to be taken.—An appeal must be taken within one year after the judgment was rendered.

§ 522. Appeal, how taken.—An appeal must be taken, by the service of a notice in writing on the clerk with whom the judgment roll is filed, stating that the appellant appeals from the judgment.

§ 523. Id.—If the appeal be taken by the defendant a similar notice must be served on the district attorney of the county in which the original judgment was rendered.

§ 524. Id.—If it be taken by the people, a similar notice must be served on the defendant, if he be a resident of, or imprisoned in the city or county; or if not, on the counsel, if any, who appeared for him on the trial, if he reside or transact his business in the county. If the service cannot, after due diligence, be made, the appellate court, upon proof thereof, may make an order for the publication of the notice, in such newspaper, and for such time as it deems proper.

§ 525. When appeal is perfected.— At the expiration of the time appointed for the publication, on filing an affidavit of the publication, the appeal becomes perfected.

§ 526. No stay on appeal by the people.—An appeal taken by the people, in no case stays or affects the operation of a judgment in favor of the defendant, until the judgment is reversed.

§ 527. Stay on appeal from conviction.—An appeal to the supreme court, from a judgment of conviction, or other determination from which an appeal can be taken, stays the execution of the judgment or determination upon filing, with the notice of appeal, a certificate of the judge who presided at the trial, or of a judge of the supreme court, that in his opinion there is reasonable doubt whether the judgment should stand, but not otherwise, except that when the judgment is of death, the appeal stays the execution of course until the determination of the appeal. And the appellate court may order a new trial if it be satisfied that the verdict against the prisoner was against the weight of evidence or against law, or that justice requires a new trial, whether any exception shall have been taken or not in the court below.

Under what circumstances stay should be granted. Sullivan *v.* Peo., 1 Park., 347; Peo. *v.* Hendrickson, ib., 396; Peo. *v.* Lohman, 2 Barb., 450; Peo. *v.* Folmsbee, 60 ib., 480; Peo. *v.* O'Reilly, 61 How. Pr., 8, 15. No exception. Peo. *v.* Williams, 29 Hun, 520; Peo. *v.* Mangano, ib., 259.

§ 528. Stay upon appeal from affirmance of conviction.— An appeal to the court of appeals, from a judgment of the supreme court, affirming a judgment of conviction, stays the execution of the judgment appealed from, upon filing, with the notice of appeal, a certificate of a judge of the court of appeals, or of the supreme court, that, in his opinion, there is reasonable doubt whether the judgment should stand, but not otherwise. Except that when the judgment is of death, the appeal stays the execution, of course, until the determination of the appeal.

§ 529 Stay to be granted only on notice.—The certificate mentioned in the last two sections cannot, however,

be granted upon an appeal on a conviction of felony, until such notice as the judge may prescribe, has been given to the district attorney of the county where the conviction was had, of the application for the certificate. But the judge may stay the execution of the judgment, in the meantime.

§ 530. Effect of the stay.—If the certificate, provided in sections 527 and 528, be given, the sheriff must, if the defendant be in his custody, upon being served with a copy of the order, keep the defendant in his custody, without executing the judgment, and detain him to abide the judgment upon the appeal.

§ 531. Id.—If, before the granting of the certificate, the execution of the judgment have commenced, the further execution thereof is suspended, and the defendant must be restored by the officer in whose custody he is, to his original custody.

§ 532. Transmitting papers to appellate court.—Upon the appeal being taken, the clerk, with whom the notice of appeal is filed, must, within ten days thereafter, without charge, transmit a copy of the notice of appeal and of the judgment roll, as follows:

1. If the appeal be to the supreme court, to the clerk of that court, where the next general term in the district is to be held.

2. If it be to the court of appeals, to the clerk of that court.

Application to amend return should be made to court where judgment was rendered. Rew *v.* Barker, 2 Cow., 406. On order of appellate court. Rule 3, Ct. App.

CHAPTER II.

DISMISSING AN APPEAL, FOR IRREGULARITY.

SEC. 533. For what irregularity, and how, dismissed.
534. Dismissal for want of return.

§ 533. For what irregularity, and how, dismissed.—If the appeal be irregular in a substantial particular,

but not otherwise, the court may, on any day in term, on motion of the respondent, upon five days' notice, served with copies of the papers on which the motion is founded, order it to be dismissed.

§ 534. Dismissal for want of return.—The court may also, upon like motion, dismiss the appeal, if the return be not made, as provided in section 532, unless, for good cause, they enlarge the time for that purpose.

CHAPTER III.

ARGUMENT OF THE APPEAL.

SEC. 535. Appeal to supreme court, how and where brought to argument.
536. Appeal to court of appeals, how brought to argument.
537. Notice of argument to counsel for defendant.
538. Papers, by whom furnished, and effect of omission.
539. Judgment of affirmance may be without argument, if appellant fail to appear. Reversal, only upon argument, though respondent fail to appear.
540. Number of counsel to be heard. Defendant's counsel to close the argument.
541. Defendant need not be present.

§ 535. Appeal to supreme court, how and where brought to argument.—An appeal to the supreme court may be brought to argument by either party, on ten days' notice, on any day, at a general term, held in the *department* in which the original judgment was given. [Am'd ch. 384 of 1884.]

Appeals and other proceedings in a criminal cause are entitled to preference. Code of Civil Proc., § 790. May be heard on any day in term. Sup. Ct., Rule 43. See Barron *v.* Peo., 1 Barb., 136.

§ 536. Id.; in court of appeals.—An appeal to the court of appeals may, in the same manner, be brought to argument by either party, on any day in term.

§ 537. Notice of argument.—If a counsel, within five days after the appeal, have given notice to the district attorney, that he appears for the defendant, notice of argument must be served on him, instead of the defendant; otherwise, notice must be served as the court may direct.

§ 538. Papers, by whom furnished.—When the appeal is called for argument, the appellant must furnish the court with copies of the notice of appeal and judgment roll. If he fail to do so, the appeal must be dismissed, unless the court otherwise direct.

See Rule 41, Sup. Ct.

§ 539. Argument, when necessary.—Judgment of affirmance may be given, without argument, if the appellant fail to appear. But judgment of reversal can only be given upon argument, though the respondent fail to appear.

See Rule 15, Ct. App.; Barron *v.* Peo., 1 Barb., 136.

§ 540. Number of counsel. Defendant's counsel to close.—Upon the argument of the appeal, if the crime be punishable with death, two counsel on each side must be heard if they require it. In any other case, the court may, in its discretion, restrict the argument to one counsel on each side. The counsel for the defendant is entitled to the closing argument.

§ 541. Defendant need not be present.—The defendant need not personally appear in the appellate court.

CHAPTER IV.

JUDGMENT, UPON APPEAL.

SEC. 542. Court to give judgment, without regard to technical errors, defects or exceptions, not affecting substantial rights.
543. May reverse, affirm or modify the judgment, and order a new trial.
544. New trial.
545. Defendant to be discharged on reversal of judgment against him, where new trial is not ordered.
546. Judgment to be executed, on affirmance against the defendant.
547. Judgment of appellate court, how entered and remitted.
548. Papers returned, not to be remitted.
549. Jurisdiction of appellate court ceases, after judgment remitted.

§ 542. Court to disregard errors, not affecting substantial rights. — After hearing the appeal, the court must give judgment, without regard to technical errors or defects or to exceptions which do not affect the substantial rights of the parties.

Illegal evidence which may have prejudiced the prisoner is ground for new trial. Lambert *v.* Peo., 6 Abb. N. C., 181. See Cox *v.* Peo., 80 N. Y., 500. Must be exception to bring up questions for review. Brotherton *v* Peo., 75 N. Y., 159. See Lattimer *v.* Hill, 8 Hun, 171; Clute *v.* Emmerick, 12 ib., 504; Moett *v.* Peo., 85 N. Y., 373; Irving *v.* Peo., 2 N. Y. Cr., 50. Formal defects. Schumpf *v.* Peo., 14 Hun, 10.

§ 543. May reverse, affirm or modify. — Upon hearing the appeal the appellate court may, in cases where an erroneous judgment has been entered upon a lawful verdict, correct the judgment to conform to the verdict, in all other cases they must either reverse or affirm the judgment appealed from, and in cases of reversal, may, if necessary or proper, order a new trial.

When new trial should not be ordered. Foot *v.* Ætna L. Ins. Co., 61 N. Y., 571; Sawyer *v.* Peo., 27 Hun, 286. Cannot entertain original motion. Ostrander *v.* Peo., 28 Hun, 38. See Peo. *v.* Hovey, 30 ib., 354.

§ 544. New trial. — When a new trial is ordered, it shall proceed in all respects as if no trial had been had.

§ 545. Defendant to be discharged on reversal if new trial is not ordered. — If a judgment against the defendant be reversed, without ordering a new trial, the appellate court must direct, if he be in custody, that he be discharged therefrom, or if he be admitted to bail, that his bail be exonerated, or if money be deposited instead of bail, that it be refunded to the defendant.

§ 546. Judgment to be executed, on affirmance against the defendant. — On a judgment of affirmance against the defendant, the original judgment must be carried into execution, as the appellate court may direct, and if the defendant be at large, a bench warrant may be issued for his arrest. If a judgment be corrected, the corrected judgment must be carried into execution as the appellate court may direct.

Resentence in capital case. Moett *v.* Peo., 85, N. Y., 373.

§ 547. Judgment of appellate court, how entered and remitted. — When the judgment of the appellate court is given, it must be entered in the judgment book,

and a certified copy of the entry forthwith remitted to the clerk with whom the original judgment roll is filed, or, if a new trial be ordered in another county, to the clerk of that county, unless the judgment be rendered in the absence of the adverse party, in which case, the court may direct it to be retained, not exceeding ten days.

See Rule 15, Ct. App.

§ 548. **Papers returned to be remitted.**—*The decision of the court and the return shall be remitted to the court below in the same form and manner as in civil actions.* [Am'd ch. 505 of 1884.]

§ 549. **When jurisdiction of appellate court ceases.** — After the certificate of the judgment has been remitted as provided in section 547, the appellate court has no further jurisdiction of the appeal, or of the proceedings thereon; and all orders, which may be necessary to carry the judgment into effect, must be made by the court to which the certificate is remitted, or by any court to which the cause may thereafter be removed.

TITLE XII.

Of Miscellaneous Proceedings.

CHAPTER I. Bail.
II. Compelling the attendance of witnesses.
III. Examination of witnesses, conditionally.
IV. Examination of witnesses, on commission.
V. Inquiry into the insanity of the defendant, before or during the trial, or after conviction.
VI. Compromising certain crimes, by leave of the court.
VII. Dismissal of the action, before or after the indictment for want of prosecution, or otherwise.
VIII. Remitting the punishment, in certain cases.
IX. Proceedings against corporations.
X. Entitling affidavits.
XI. Errors and mistakes, in pleadings and other proceedings.
XII. Disposal of property, stolen or embezzled.
XIII. Reprieves, commutations and pardons.

CHAPTER I.

BAIL.

ARTICLE I. In what cases the defendant may be admitted to Bail.
II. Bail, upon being held to answer, before indictment.
III. Bail, upon an indictment, before conviction.
IV. Bail, upon an appeal.
V. Deposit, instead of bail.
VI. Surrender of the defendant.
VII. Forfeiture of the undertaking of bail, or of the deposit of money.
VIII. Re-commitment of the defendant, after having given bail, or deposited money instead of bail.

ARTICLE I.

IN WHAT CASES THE DEFENDANT MAY BE ADMITTED TO BAIL.

SEC. 550. Admission to bail, defined.
551. Taking bail, defined.
552. Offenses not bailable.
553. In what cases defendant may be admitted to bail, before conviction.
554. In what cases he may be admitted to bail, after conviction and upon appeal.
555. Nature of bail before conviction.
556. Nature of bail after conviction and upon appeal.

§ 550. Admission to bail defined.—When the defendant is held to appear for examination, bail for such appearance may be taken either,

1. By the magistrate who issued the warrant or before whom the same is returnable; or,

2. By any judge of the supreme court.

§ 551. Taking bail defined.—The taking of bail consists in the acceptance, by a competent court or magistrate, of the undertaking of sufficient bail for the appearance of the defendant according to the terms of the undertaking, or that the bail will pay to the people of this state a specified sum.

Eighth Amendt. Cons. U. S. Art. 1, § 5, N.Y. Const. The power to admit to bail is incident to power to hear and determine. Peo. *v.* Van Horne, 8 Barb., 158; Peo. *v.* Shattuck, 6 Abb. N. C., 83.

§ 552. Offenses not bailable.—The defendant cannot be admitted to bail except by a judge of the supreme court or by a court of oyer and terminer where he is charged,

1. With a crime punishable with death, or

2. With the infliction of a probably fatal injury upon another, and under such circumstances, as that, if death ensue, the crime would be murder.

If facts do not sustain charge of murder contained in warrant, bail may be allowed. Peo. *v.* Sheriff of Westchester, 1 Park, 659; Peo. *v.* Porter, 8 Barb., 168; Peo. *v* Beigler, 3 Park, 316; Peo. *v.* Baker, 10 How. Pr., 567; see also, Peo. *v.* Collins, 20 How. Pr., 111.

§ 553. When defendant may be admitted to bail, before conviction.—If the charge be for any other crime, he may be admitted to bail, before conviction, as follows:

1. As a matter of right, in cases of misdemeanor;
2. As a matter of discretion, in all other cases.

§ 554. When he may be admitted to bail, before conviction and upon appeal.—Before conviction, a defendant may be admitted to bail,

1. For his appearance before the magistrate, on the examination of the charge, before being held to answer.
2. To appear at the court to which the magistrate is required, by section 221, to return the depositions and statements, upon the defendant being held to answer, after examination.
3. After indictment, either upon the bench warrant issued for his arrest, or upon an order of the court committing him, or enlarging the amount of bail, or upon his being surrendered by his bail, to answer the indictment in the court in which it is found, or to which it may be sent or removed for trial.

And any captain or sergeant of police in any city or village of this state may take bail for appearance before a competent and accessible magistrate the next morning from any person arrested for a misdemeanor between two o'clock in the afternoon and eight o'clock the next morning, if a magistrate competent to take the bail be not found within an hour after the arrest. When such captain or sergeant of police takes bail he must take it by an undertaking in the form in this section mentioned, executed in his presence by the defendant and at least one surety who must justify under oath and for that purpose the officer may administer the oath. The amount of bail taken by a captain or sergeant of police under this section must be as follows: If the offense be the violation of a corporation ordinance the amount of the bail must be one hundred dollars, except that if a conviction

upon the charge would render the defendant liable only for a fine, the amount of the bail must be double the largest fine that could be imposed; if the conviction would render him liable to imprisonment for thirty days or less, the amount of bail must be two hundred dollars. In all other cases the amount of bail must be five hundred dollars. The form of the undertaking must be as follows:

We A. B., defendant and , residing at number , in and C. D., defendent,* residing at, hereby jointly and severally undertake that the above A. B., defendant, shall appear and answer the complaint (describing it briefly) before the magistrate before whom he would be arraigned if not bailed on the day of , eighteen hundred and , at o'clock, to answer to the complaint, and there remain to answer, subject to any order of the magistrate, and render himself in execution thereof, or if he fail to perform either of these conditions, then he will pay to the people of the state of New York the sum of

§ 555. Nature of bail before conviction.—After the conviction of a crime not punishable with death, a defendant who has appealed, and when there is a stay of proceedings, but not otherwise, may be admitted to bail:

1. As a matter of right, when the appeal is from a judgment imposing a fine only;

2. As a matter of discretion, in all other cases.

§ 556. Nature of bail after conviction and upon appeal.—After conviction and upon an appeal, the defendant may be admitted to bail, as follows:

1. If the appeal be from a judgment imposing a fine only, on the undertaking of bail, that he will pay the same, or such part of it as the appellate court may direct, if the judgment be affirmed or modified or the appeal be dismissed;

2. If judgment of imprisonment have been given, that he will surrender himself in execution of the judgment, upon its being affirmed or modified, or upon the appeal being dismissed.

ARTICLE II.

BAIL, UPON BEING HELD TO ANSWER, BEFORE INDICTMENT.

SEC. 557, 558. By what courts or magistrates defendant may be admitted to bail

* Sic.

559. At what time defendant may be admitted to bail by a magistrate.
560. In cities, if crime be felony, application for admission to bail must be on notice.
561. Form of order, if made by the court.
562. Form of order, if made by a magistrate.
563. If application be denied by a magistrate, no subsequent application can be made to another magistrate.
564. Violation of last section a misdemeanor. Admission to bail in such case, how revoked or vacated.
565. Construction of last two sections.
566. Decision final.
567. Bail, by whom taken.
568. How put in; and form of undertaking.
569. Qualifications of bail.
570–572. Bail, how to justify.
573. Bail may be examined as to sufficiency.
574. Other testimony may be received as to their sufficiency.
575. Decision as to their sufficiency; and filing affidavits of justification and undertaking.
576. On allowance of bail, and execution of undertaking, defendant to be discharged. Form of discharge.
577. If bail disallowed.

§ 557. Who may admit to bail.—When the defendant has been held to answer, as provided in section 208, the admission to bail may * by the magistrate by whom he is so held, if he be one of the magistrates mentioned in section one hundred and forty-seven, and the crime charged is a misdemeanor, or a felony punishable with imprisonment, not exceeding five years; or if he be a judge of the supreme court; or any judge authorized to preside in a court having jurisdiction to try indictments, in all cases where bail may be taken, before conviction, as provided in section 554.

Peo. *v.* Dutcher, 83 N. Y., 240.

§ 558. Id. — When, by reason of the degree of the crime, the committing magistrate has not authority to admit to bail, the defendant may be admitted to bail by one of the officers having authority to admit to bail in the case, as provided in the second subdivision of the last section, or by the court to which the depositions and statements are returned by the committing magistrate, as provided in section 221, if the case be triable therein, or if not, by the court to which, after indictment, it may be sent or removed for trial.

§ 559. When magistrate may bail.—The defendant may be admitted to bail by a magistrate, as provided in the last two sections, upon being held to answer,

* Sic.

or at any time before the return of the depositions and statement, to the court. After that time he can be admitted to bail, only by a judge presiding in the court in which the crime is triable, if it be sitting, or if not, by one of the magistrates mentioned in the second subdivision of section 557.

Court alone can bail while in session. *Ex Parte* Babcock, 2 Abb. Pr. N. S., 204. See Peo. *v.* Clews, 77 N. Y., 39; Peo. *v.* Mead, 28 Hun, 227; s. c., 92 N. Y., 415; Peo. *v.* Sherwin, 17 W. D., 125.

§ 560. When must be on notice.—In the several cities of this state, if the crime charged be a felony, the application for admission to bail must be upon notice of at least two days, to the district attorney of the county, unless the magistrate by order fixes a shorter time; and the committing magistrate, upon the like notice, in writing, requiring him to do so, must transmit the depositions and statement, or a copy thereof, to the court or magistrate to whom the application for bail is to be made.

§ 561. Form of order made by the court.—If the application be to the court, an order must be made, granting or denying it, and if it be granted, stating the sum in which bail may be taken.

§ 562. Form of order made by a magistrate.—If the application be to a magistrate, he must certify, in writing, his decision granting or denying the same; and if he grant the application, must state in the certificate the sum in which bail may be taken; which certificate he must cause to be forthwith filed with the clerk of the court to which the depositions and statement are required to be sent.

§ 563. If application be denied.—If an application for admission to bail, made to a magistrate, be denied, not more than two subsequent applications therefor can be made to other magistrates, except that an application can be made to any magistrate mentioned in subdivision two of section 557, if no application has been previously made to a magistrate mentioned therein.

See Peo. *v.* Cunningham, 3 Park., 531.

§ 564. Violation of last section.—A violation of the last section is punishable as a misdemeanor, and the admission of the defendant to bail contrary thereto may be revoked by the magistrate who made it, or vacated by the court to which the depositions and statement are or must be sent, as provided in section 221, or to which, after indictment, the action must be sent for trial.

§ 565. Construction of last two sections.—The provisions of the last two sections shall not be construed to limit the power of any judge presiding in the court in which the offense is triable to let the defendant to bail.

§ 566. When decision final.—The decision of the judge presiding in the court in which the crime is triable, granting or denying bail, is final, except as provided in section 563.

§ 567. Bail, by whom taken.— If the defendant be admitted to bail by a magistrate, the bail must be taken by the magistrate granting the order, unless the order shall specify that the same may be taken by some other designated magistrate.

§ 568. How put in; and form of undertaking.— Bail is put in, by a written undertaking, executed by sufficient surety (with or without the defendant, in the discretion of the magistrate), and acknowledged before the magistrate in substantially the following form:

"An order having been made on the day of , 18 , by A. B., *a justice of the peace of the town of* , (or as the case may be), that C. D. be held to answer, upon a charge of (stating briefly the nature of the crime), upon which he has been duly admitted to bail, in the sum of dollars;

We, (C. D., defendant, if the defendant join in the undertaking), of (stating his place of residence and occupation) and E. F., and G. H., (stating place of residence and occupation) surety, or sureties (as the case may be) hereby undertake, jointly and severally, that the above-named C. D. shall appear and answer the charge above mentioned, in whatever court it may be prosecuted; and shall at all times render himself amenable to the orders and process of the court; and, if convicted, shall appear for judgment, and render himself in execution thereof; or if he fail to perform either of these conditions, that we will pay to the people of the state of New York, the sum of dollars" (inserting the sum in which the defendant is admitted to bail).

§ 569. Qualifications of bail.—The qualifications of bail are as follows:

1. He must be a resident, and a house holder or freeholder within the state, and, unless the magistrate otherwise direct, within the county;

2. He must be worth the amount specified in the undertaking, exclusive of property exempt from execution;

but the magistrate, on taking bail, may require two sureties, or may allow two or more to justify severally in amounts less than that expressed in the undertaking, if the whole justification be equivalent to that of one sufficient surety.

Attorney cannot be surety. Rule 5, Sup. Ct.

§ 570. Bail, how to justify.—Except as prescribed in the next section, the bail may, in the exercise of a just discretion, be taken, and may justify, without notice to the district attorney, or reasonable notice of the intention to give bail may be required by the court or magistrate, to be given to the district attorney. When given, the notice shall be as prescribed in the next section.

§ 571. Notice of application for bail.—In the several cities of this state, if the crime charged be a felony, a previous notice in writing of at least two days, of the time and place of giving the bail, must be served upon the district attorney of the county, stating:

1. The names, places of residence and occupations of the proposed surety or sureties;

2. A general description of the real or personal property of the surety or sureties, in respect to which they propose to justify as to their sufficiency, with the incumbrances thereon, by mortgage, judgment or otherwise, if any.

The district attorney may waive the giving of the notice herein provided for, or a shorter time than two days may be directed by the court or magistrate requiring the notice.

§ 572. Affidavit of sureties.—The surety or sureties must in all cases justify by affidavit, taken before the magistrate. The affidavit must state that each of the sureties possesses the qualifications provided in section 569.

See Stratton *v.* Peo., 20 Hun, 288; 81 N. Y., 629.

§ 573. Bail may be examined.—The district attorney, or the magistrate, may thereupon further examine the sureties upon oath, concerning their sufficiency, in such manner as the magistrate may deem proper. The questions put to the sureties, and their answers must be reduced to writing, and must be subscribed by them.

§ 574. Decision as to their sufficiency.—The magistrate may also receive other testimony, either for or

against the sufficiency of the bail, and may from time to time adjourn the taking of bail, to afford an opportunity of proving or disproving its sufficiency.

§ 575. Filing affidavits and undertaking.—When the examination is closed, the magistrate must make an order, either allowing or disallowing the bail, and must forthwith cause the same, with the affidavits of justification, and the undertaking of bail, to be filed with the clerk of the court to which the depositions and statement must be sent, as prescribed in section 221.

§ 576. Discharge.—Upon the allowance of the bail and the execution of the undertaking, the court or magistrate must make an order, signed by him, with his name of office, for the discharge of the defendant, to the following effect:

"To the sheriff of the county of , [or, in the city and county of New York, "to the keeper of the city prison of the city of New York:"] "A. B., who is detained by you on a commitment to answer a charge for the crime of, [designating it generally,] having given sufficient bail to answer the same, you are commanded forthwith to discharge him from your custody."

§ 577. If bail disallowed.—If the bail be disallowed, the defendant must be detained in custody until lawfully discharged.

ARTICLE III.

BAIL, UPON AN INDICTMENT BEFORE CONVICTION.

SEC. 578. In misdemeanor, officer to take defendant before a magistrate.
579. In felony, to deliver him into custody.
580. Taking bail, when offense is bailable.
581. Bail, how put in. Form of undertaking.
582. Sections applicable to qualifications of bail, to putting in and justifying bail, and to incidental proceedings.

§ 578. In misdemeanor, officer to take defendant before a magistrate.—When the crime charged in the indictment is a misdemeanor, the officer serving the

bench-warrant must, if required, take the defendant before a magistrate in the county in which it is issued, or in which he is arrested, for the purpose of giving bail as prescribed in sections 302 and 305.

§ 579. In felony, to deliver him into custody.— If the crime charged in the indictment be a felony, the officer arresting the defendant must deliver him into custody, according to the command of the bench-warrant, as prescribed in section 301.

§ 580. Taking bail, when offense is bailable.— When the defendant is so delivered into custody, if the felony charged be bailable, and the amount of bail have been fixed, bail may be taken by the judge presiding in the court in which the indictment was found, or to which it is sent or removed, or by any magistrate in the county belonging to the class mentioned in the second subdivision of section 557.

§ 581. Bail, how put in. Form of undertaking.— The bail must be put in by a written undertaking, executed by a sufficient surety, with or without the defendants, in the discretion of the magistrate, and acknowledged before the court or its clerk in open court or the magistrate, in substantially the following form:

"An indictment having been found on the day of , 18 , in the *court of sessions of the county of Albany*, [or as the case may be], charging A. B. with the crime of, [designating it generally,] and he having been duly admitted to bail in the sum of dollars:

"We, A. B., defendant [if the defendant join in the undertaking] and C. D., surety or sureties, as the case may be, of [stating his place of residence and occupation] and E. F., of [stating his place of residence and occupation] hereby jointly and severally undertake, that the above-named A. B. shall appear and answer the indictment above mentioned, in whatever court it may be prosecuted, and shall at all times render himself amenable to the orders and process of the court; and, if convicted, shall appear for judgment, and render himself in execution thereof; or if he fails to perform

either of these conditions, that we will pay to the people of the state of New York the sum of dollars," [inserting the sum in which the defendant is admitted to bail.]

§ 582. Sections applicable hereto.—The provisions contained in sections 569 to 577, both inclusive, apply to the qualifications of the sureties, and to all the proceedings respecting the putting in and justification of bail, and incidental thereto.

ARTICLE IV.

BAIL UPON AN APPEAL.

SEC. 583. Who may admit to bail.
584. Notice of the application, when required.
585. Qualifications of bail, and how put in.

§ 583. Who may admit to bail.— In the cases in which the defendant may be admitted to bail upon an appeal, as provided in section 556, the order admitting him to bail may be made, either by the court from which the appeal is taken, or the presiding judge thereof, or by the appellate court, or a judge thereof, or by a judge of the supreme court.

Peo. *v.* Bowe, 58 How. Pr., 393.

§ 584. Notice of the application, when required.—The court or officer to whom the application for bail is made may require such notice thereof as he deems reasonable, to be given to the district attorney of the county in which the verdict or judgment was originally rendered.

§ 585. Qualifications of bail, and how put in.—The sureties must possess the qualifications, and the bail must be put in all respects, in the manner prescribed by sections 569 to 577, both inclusive; except that the undertaking must be to the effect that the defendant will, in all respects, abide the orders and judgment of the appellate court upon the appeal.

ARTICLE V.

DEPOSIT INSTEAD OF BAIL.

SEC. 586. Deposit, when and how made.
587. May be made after bail given, and before forfeiture; and in such case bail discharged.
588. Bail may be given after deposit; and in such case money deposited to be refunded.
589. Deposit to be applied to payment of judgment of fine, and surplus to be refunded.

§ 586. Deposit, when and how made.—The defendant, at any time after an order admitting him to bail, instead of giving bail, may deposit with the county treasurer, of the county in which he is held to answer, the sum mentioned in the order; and upon delivering to the officer, in whose custody he is, a certificate of the deposit, he must be discharged from custody.

§ 587. May be made after bail given.—If the defendant have given bail, he may, at any time before the forfeiture of the undertaking, in like manner deposit the sum mentioned in the undertaking; and upon the deposit being made the bail is exonerated.

§ 588. Bail may be given after deposit.—If money be deposited, as provided in the last section, bail may be given, in the same manner as if it had been originally given upon the order for admission to bail, at any time before the forfeiture of the deposit. The court or magistrate before whom the bail is taken must thereupon direct, in the order of allowance, that the money deposited be refunded by the county treasurer to the defendant; and it must be refunded accordingly.

§ 589. Deposit how applied.—When money has been deposited, if it remain on deposit and unforfeited at the time of a judgment for the payment of a fine, the county treasurer must, under direction of the court, apply the money in satisfaction thereof, and after satisfying the fine, must refund the surplus, if any, to the defendant.

ARTICLE VI.

SURRENDER OF THE DEFENDANT.

SEC. 590. Surrender, by whom, when, and how made.
591. By whom, when and where, defendant may be arrested for the purpose of a surrender.
592. On surrender before forfeiture, money deposited to be refunded. Order therefor, how obtained.

§ 590. Surrender. — At any time before the forfeiture of the undertaking, any surety may surrender the defendant in his exoneration, or the defendant may surrender himself, to the officer to whose custody he was committed at the time of giving bail, in the following manner:

1. A certified copy of the undertaking of the bail must be delivered to the officer, who must detain the defendant in his custody thereon, as upon a commitment, and by a certificate in writing, acknowledge the surrender;

2. Upon the undertaking and the certificate of the officer, the court in which the indictment or the appeal, as the case may be, is pending, may, upon a notice of five days to the district attorney of the county, with a copy of the undertaking and certificate, order that the bail be exonerated; and on filing the order and the papers used on the application, the bail is exonerated accordingly.

§ 591. Arrest for the purpose of a surrender. — For the purpose of surrendering the defendant, any surety, at any time before he is finally charged, and at any place within the state, may himself arrest him, or by a written authority indorsed on a certified copy of the undertaking, may empower any person of suitable age and discretion to do so.

§ 592. Refunding deposit. — If money have been deposited instead of bail and the defendant at any time before the forfeiture thereof surrender himself to the officer to whom the commitment was directed, in the manner provided in section 590, the court must order a return of the deposit to the defendant, upon producing

the certificate of the officer showing the surrender, and upon a notice of five days to the district attorney, with a copy of the certificate.

ARTICLE VII.

FORFEITURE OF THE UNDERTAKING OF BAIL, OR OF THE DEPOSIT OF MONEY.

SEC. 593. In what cases, and how ordered.
594. When and how forfeiture may be discharged.
595. Forfeiture of bail, to be enforced by action.
596. Deposit of money when forfeited, how disposed of.
597. Remission of forfeiture.
598. Application therefor, how made and on what terms granted.

§ 593. When and how ordered. — If, without sufficient excuse, the defendant neglect to appear for arraignment, or for trial or judgment, or upon any other occasion where his presence in court may be lawfully required, or to surrender himself in execution of the judgment, the court must direct the fact to be entered upon its minutes; and the undertaking of his bail, or the money deposited, instead of bail, as the case may be, is thereupon forfeited.

When bail released. Peo. *v.* Clary, 17 Wend., 374; Peo. *v.* Green, 5 Hill, 647; Peo. *v.* Stager, 10 Wend., 431; Peo. *v.* Dorby, 1 Park., 392; Peo. *v.* Mack, ibid., 567. What does not amount to a release. Peo. *v.* Anable, 7 Hill, 33; Peo. *v.* McCoy, 39 Barb., 73. What amounts to a forfeiture. Peo. *v.* Petry, 2 Hilt, 523; Peo. *v.* Blankman, 17 Wend., 252; Peo. *v.* Wilgus, 5 Den., 58. What will excuse default. Peo. *v.* Bartlett, 3 Hill, 570; Peo. *v.* Hainer, 1 Den., 454; Peo. *v.* Chusney, 44 Barb., 118; Peo. *v.* Cook, 30 How. Pr., 110.

§ 594. When and how the forfeiture may be discharged.—If, at any time before the final adjournment of the court, the defendant appear and satisfactorily excuse his neglect, the court may direct the forfeiture of the undertaking or deposit to be discharged, upon such terms as are just.

For terms, see Peo. *v.* Coman, 49 Pow. Pr., 91.

§ 595. Forfeiture of bail to be enforced by action.—If the forfeiture be not discharged, as provided

in the last section, the district attorney may, at any time after the adjournment of the court, proceed against any surety upon his undertaking. Such proceeding shall be by action only, except in the city and county of New York, where it shall be in the method now prescribed by special statute.

§ 596. Deposit when forfeited, how disposed of.—If, by reason of the neglect of the defendant to appear, as provided in section 593, money deposited instead of bail is forfeited, and the forfeiture be not discharged or remitted, as provided in sections 594 and 597, the county treasurer with whom it is deposited may at any time after the final adjournment of the court apply the money deposited to the use of the county.

§ 597. Remission of forfeiture.—After the forfeiture of the undertaking or deposit, as provided in this article, the court directing the forfeiture, the county court of the county, or in the city of New York, the court of common pleas of that city, may remit the forfeiture or any part thereof, upon such terms as are just.

Peo. *v.* Spear, 1 N. Y. Cr., 538.

§ 598. Application therefor, and terms.—The application must be upon at least five days' notice to the district attorney of the county served with copies of the affidavits and papers on which it is founded, and can be granted only upon payment of the costs and expenses incurred in the proceedings for the enforcement of the forfeiture.

ARTICLE VIII.

RE-COMMITMENT OF THE DEFENDANT, AFTER HAVING GIVEN BAIL, OR DEPOSITED MONEY INSTEAD OF BAIL.

SEC. 599. In what cases.
600. Contents of the order.
601. Defendant may be arrested in any county.
602. If for failure to appear for judgment, defendant must be committed.
603. If for other cause, he may be admitted to bail.
604. Bail in such case, by whom taken.
605. Form of the undertaking.
606. Qualifications of bail, and how put in.

§ 599. In what cases.—The court to which the committing magistrate returns the deposition and statement, or in which an indictment or appeal is pending, or to which a judgment on appeal is remitted to be carried into effect, may, by an order entered upon its minutes, or if the court be not in session, any judge thereof may direct the arrest of the defendant, and his commitment to the officer to whose custody he was committed at the time he was admitted to bail, and his detention until legally discharged, in the following cases:

1. When, by reason of his failure to appear, he has incurred a forfeiture of his bail, or of money deposited instead thereof, as provided in section 593.

2. When it satisfactorily appears to the court that his bail, or either of them, are dead, or insufficient, or have removed from the state.

3. Upon an indictment being found, in the cases provided in section 306.

§ 600. Contents of the order.—The order for the recommitment of the defendant must recite, generally, the facts upon which it is founded, and direct that the defendant be arrested by any sheriff, constable, marshal or policeman in this state, and committed to the officer to whose custody he was committed, at the time he was admitted to bail, to be detained until legally discharged.

§ 601. Defendant may be arrested in any county.—The defendant may be arrested pursuant to the order, upon a certified copy thereof, in any county, in the same manner as upon a warrant of arrest; except, that when arrested in another county, the order need not be endorsed by a magistrate of that county.

§ 602. For failure to appear for judgment, defendant must be committed.—If the order recite, as the ground upon which it is made, the failure of the defendant to appear for judgment upon conviction, the defendant must be committed according to the requirement of the order.

§ 603. For other cause, he may be admitted to bail.—If the order be made for any other cause, and the

crime be bailable, the court may fix the amount of bail, and may direct in the order, that the defendant be admitted to bail in the sum fixed, which must be specified in the order.

§ 604. Bail in such case, by whom taken.—When the defendant is admitted to bail, the bail may be taken by any magistrate in the county, having authority, in a similar case, to admit to bail upon the holding of the defendant to answer before indictment, as prescribed in sections 557 and 558, or by any other magistrate to be designated by the court.

§ 605. Form of the undertaking.—When bail is taken upon the recommitment of the defendant, the undertaking of bail must be in substantially the following form:

"An order having been made on the day of 18 , by the court of (naming the court,) that A. B. be admitted to bail in the sum of dollars, in an action pending in that court against him in behalf of the people of the state of New York, upon an [information, presentment, indictment, or appeal, as the case may be.]

"We A. B., defendant (if the defendant join in the undertaking,) and C. D., surety of [stating his place of residence and occupation,] and E. F., surety of [stating his place of residence and occupation,] hereby jointly and severally, undertake that the above-named A. B. shall appear in that or any other court in which his appearance may be lawfully required, upon that [information, presentment or appeal, as the case may be,] and shall at all times render himself amenable to its orders and process, and appear for judgment and surrender himself in execution thereof or if he fail to perform either of these conditions, that we will pay to the people of the state of New York the sum of dollars, [inserting the sum in which the defendant is admitted to bail.]

§ 606. Qualifications of bail.—The bail must possess the qualifications, and must be put in, in all respects, in the manner prescribed by sections 569 to 577, inclusive.

CHAPTER II.

COMPELLING THE ATTENDANCE OF WITNESSES.

SEC. 607. Subpœna, defined.
608. Magistrate may issue subpœnas, on information or presentment.
609. District attorney may issue subpœnas for witnesses before grand jury.
610. He may also issue subpœnas, for the people, on trial of an indictment.
611. Clerk may issue blank subpœnas, for witnesses for defendant, on trial.
612. Form of subpœna.
613. Requirement in subpœna, to produce books, papers and documents.
614. Subpœna, by whom served.
615. How served.
616. Payment of expenses of witness, when he is from without the county, or is poor.
617. County treasurer to pay on order.
618. Witnesses residing or served with subpœna, out of the county, when and how compelled to attend.
619. Disobedience to subpœna, or refusal to be sworn or to testify, how punished.

§ 607. Subpœna, defined.—The process by which the attendance of a witness, before a court or magistrate is required, is a subpœna.

§ 608. Magistrate may issue subpœnas, for witnesses before grand jury.—A magistrate, before whom an information is laid, may issue subpœnas, subscribed by him, for witnesses within the state, either on behalf of the people or of the defendant.

§ 609. District attorney may issue subpœnas for witnesses before grand jury.—The district attorney of the county may issue subpœnas, subscribed by him, for witnesses within the state, in support of the prosecution or for such other witnesses as the grand jury may direct, to appear before the grand jury, upon an investigation pending before them.

§ 610. Id.; for trials.—The district attorney may, in like manner, issue subpœnas subscribed by him, for witnesses within the state, in support of an indictment, to appear before the court at which it is to be tried.

§ 611. Clerk may issue blank subpœnas for witnesses for defendant, on trial.—The clerk of a court at which an indictment is to be tried, must, at all times, upon the application of the defendant, and without charge, issue as many blank subpœnas, under the seal of the court and subscribed by him as clerk, for witnesses within the state, as may be required by the defendant.

§ 612. Form of subpœna.—A subpœna, authorized by the last four sections, must be substantially in the following form:

"In the name of the people of the state of New York: To A. B.

"You are commanded to appear before *C.D., a justice of the peace of the town of* , [or "the grand jury of the county of ," or "the court of sessions of the county of ," or as the case may be,] at [naming the place,] on [stating the day and hour,] as a witness in a criminal action prosecuted by the people of the state of New York, against E. F.

"Dated at the town of , [as the case may be,] the day of , 18 .

"G.H., justice of the peace," [or "I. K., district attorney," or "By order of the court, L. M., clerk," as the case may be.]

§ 613. Subpœna duces tecum.—If books, papers or documents be required, a direction to the following effect must be contained in the subpœna: "And you are required also, to bring with you the following," [describing intelligibly the books, papers or documents required.]

§ 614. Subpœna, by whom served.—A peace officer must serve, in his county, city, town or village, as the case may be, any subpœna delivered to him for service, either on the part of the people or of the defendant; and must make a written return of the service, subscribed by him, stating the time and place of service, without delay. A subpœna may, however, be served by any other person.

§ 615. How served.—A subpœna is served, by delivering it, or by showing it, and delivering a copy thereof, to the witness personally.

§ 616. Payment of witness, when from without the county, or is poor.—When a person attends before a magistrate, grand jury or court, as a witness on behalf of the people, upon a subpœna, or pursuant to an undertaking, and it appears that he has come from a place out of the county, or that he is poor, the court, if the attendance of the witness be upon a trial, by an order entered upon its minutes, or in any other case, the county judge, or in the city of New York, the recorder or city judge, or judge of the general sessions of that city, by a written order, may direct the county treasurer to pay the witness a reasonable sum, to be specified in the order, for his expenses.

§ 617. County treasurer to pay on order.—Upon the production of the order, or a certified copy thereof, the county treasurer must pay the witness the sum specified therein, out of the county treasury

§ 618. Witnesses out of the county, how compelled to attend.—No person is obliged to attend as a witness, before a court or magistrate out of the county where the witness resides or is served with the subpœna, unless the judge of the court in which the crime is triable, or a judge of the supreme court, or a county judge, or in the city of New York, the recorder or city judge, or judge of the general sessions of that city, upon an affidavit of the prosecutor or district attorney, or of the defendant or his counsel, stating that he believes that the evidence of the witness is material, and his attendance at the examination or trial necessary, shall endorse on the subpœna an order for the attendance of the witness.

§ 619. Disobedience to subpœna, how punished.—Disobedience to a subpœna, or a refusal to be sworn or to testify, may be punished by the court or magistrate,

as for a criminal contempt in the manner provided in the Code of Civil Procedure.

See Code Civil Proc., §§ 8–13, 853—863 Witness is to be allowed a reasonable time to attend. Wilkie *v.* Chadwick, 13 Wend., 49. Extreme poverty will excuse non-attendance. Peo. *v.* Davis, 15 Wend., 602. When subpœna is defective. Peo. *v.* Dutcher, 3 Abb. N. S., 151. When not. Peo. *v.* Van Wyck, 3 Cai., 233. A refusal of a witness to answer before grand jury, may be punished as a contempt in court. Peo. *v.* Kelly, 24 N. Y., 74; Peo. *v.* Fancher, 2 Hun, 226. Proof for an attachment against witness failing to answer need not be in writing. Baker *v.* Williams, 12 Barb., 527.

CHAPTER III.

EXAMINATION OF WITNESSES, CONDITIONALLY.

SEC. 620. Witnesses to be examined conditionally, for the defendant as provided in this chapter.
621. In what cases defendant may apply for order.
622. Application, on what facts to be founded.
623. If during term, to be made to the court.
624. If not during term, to whom to be made.
625. The order, when granted and what to contain.
626. If made by the court, may direct examination before a judge or magistrate. If made by a judge, examination to be before him.
627. On proof of service, if district attorney absent, examination to proceed.
628. If facts on which order was founded, be disapproved, examination not to proceed.
629. Testimony, how taken and authenticated.
630. Deposition, how, by whom and when filed.
631. When it may be read in evidence.
632. When to be be excluded.
633. On reading the deposition, on trial, what objections may be taken.
634. Attendance of witness for examination, how compelled.
635. Disobedience of witness, how punished.

§ 620. Witnesses to be examined conditionally for the defendant.—When a defendant has been held to answer a charge of a crime, he may, either before or after indictment, have witnesses examined conditionally on his behalf, as prescribed in this chapter, and not otherwise.

§ 621. When defendant may apply for order.—When a material witness for the defendant is about to leave the state, or is so sick or infirm, as to afford rea-

sonable grounds for apprehending that he will be unable to attend the trial, the defendant may apply for an order that the witness be examined conditionally.

Foreign witness, temporarily present, may be so examined. Wait. v. Whitney, 7 Cow., 69.

§ 622. Application, on what facts.—The application must be made upon affidavit, showing:

1. The nature of the crime charged;
2. The state of the proceedings in the action;
3. The name and residence of the witness, and that his testimony is material to the defense of the action; and,
4. That the witness is about to leave the state, or is so sick or infirm as to afford reasonable grounds for apprehending that he will be unable to attend the trial.

§ 623. If during term, to be made to the court.—The application, if made during the term, must be made to the court.

§ 624. If not during term, to whom to be made.—If not made during the term, it may be made as follows:

1. When the indictment is pending in a court of oyer and terminer, or in a court of sessions other than in the city of New York, to a judge of the supreme court, or to the county judge:
2. When the indictment is pending in the court of general sessions of the city of New York, to the recorder or city judge or judge of general sessions, or one of the judges of the court of common pleas of that city:
3. When the indictment is pending in a city court, to the recorder or city judge of the city in which it is pending.

§ 625. The order, when granted and what to contain.—If the court or officer be satisfied, that the examination of the witness is necessary to the attainment of justice, an order must be made, that the wit-

ness be examined conditionally, at a specified time and place, and that a copy of the order, and of the affidavit on which it was granted, be served on the district attorney, within a specified time before that fixed for the examination.

§ 626. If made by the court, may direct examination before a judge or magistrate.—If the order be made by the court, it may direct that the examination be taken before a judge thereof, or before a magistrate in the county, to be named in the order. If made by any of the officers mentioned in section 624, it must direct the examination to be taken before him.

§ 627. On proof of service, examination to proceed.—On proof being furnished to the officer before whom the examination is appointed, of the service upon the district attorney, of a copy of the order, and of the affidavit on which it was granted, if no counsel appear on the part of the people, the examination must proceed.

§ 628. If facts on which order was founded, be disproved, no examination.—If the district attorney or other counsel appear on the part of the people, and it be shown to the satisfaction of the court or officer, by affidavit or other proof, or on the examination of the witness, that he is not about to leave the state, or is not sick or infirm, or that the application was made to avoid the examination of the witness on the trial, the examination cannot take place; otherwise it must proceed.

§ 629. Testimony, how taken and authenticated.—The testimony given by the witness must be reduced to writing, and authenticated in the same manner as the testimony of a witness taken in support of an information, as prescribed in section 200.

Defective depositions. Peo. *v.* Restell, 3 Hill, 289; Peo. *v.* Ward, 4 Park., 516; Peo. *v.* Chrystal, 8 Barb., 545.

§ 630. Filing deposition.—The deposition must be retained by the officer taking it, and filed by him in the office of the clerk of the court without unnecessary delay.

Deposition may be ordered filed *nunc pro tunc*. Burdell *v.* Burdell, 1 Duer, 625.

§ 631. When it may be read in evidence.—The deposition, or a certified copy thereof, may be read in evidence by either party on trial, upon its appearing that the witness is unable to attend, by reason of his death, insanity, sickness or infirmity, or of his continued absence from the state.

Inability must exist at time of trial to entitle deposition to be read. Fry *v.* Bennett, 4 Duer, 247. See Donnell *v.* Walsh, 6 Bos., 621. What is sufficient proof of inability. Bronner *v.* Frauenthal, 37 N. Y., 166; Markoe *v.* Aldrich, 1 Abb. Pr., 55.

§ 632. When to be excluded.—The deposition cannot, however, be read, if it appear that the copy of the order and of the affidavit on which it was founded, was not served on the district attorney, as directed, or that the examination was in any respect unfair or not conducted as prescribed in this chapter.

There must be an opportunity to cross examine. Hewlett *v.* Wood, 67 N. Y., 394; 7 Hun, 227. If consent given to read deposition, it cannot be withdrawn. Beebe *v.* Peo., 5 Hill, 32.

§ 633. On reading deposition, what objections may be taken.—Upon the reading of the deposition in evidence, the same objections may be taken to a question or answer contained therein, as if the witness had been examined orally in court.

Objections to the competency of the witness. *Ex parte* Kip, 1 Paí., 601.

§ 634. Attendance of witness for examination, how compelled.—The attendance of the witness may be enforced, by a subpœna subscribed by the officer, or issued under the seal of the court.

§ 635. Disobedience of witness, how punished. Disobedience to the subpœna, or a refusal to be sworn or to testify, may be punished by the court or officer, as prescribed in section 619.

CHAPTER IV.

EXAMINATION OF WITNESSES ON COMMISSION.

SEC. 636. Witness residing out of the state, to be examined for defendant, as provided in this chapter.
637. In what cases defendant may apply for order to examine witnesses on commission.
638. Commission defined.
639. Application for commission, on what facts to be founded.
640. If during term, to be made to the court.
641. If not during term, to whom to be made.
642. Notice of application, when required and how given.
643. Order for commission, when granted.
644. Trial to be stayed until execution and return of commission.
645. Interrogatories, and notice of settlement.
646. Cross-interrogatories, and notice of settlement.
647, 648. What may be inserted in interrogatories.
649. Direction as to return of commission.
650. Commission, how executed.
651. Copy of last section to be annexed to commission.
652, 653. Commission, how returned, when delivered to agent for that purpose.
654. When and how filed.
655. Commission returned by mail, how disposed of.
656. Commission and return to be open for inspection, and copies to be furnished.
657. Deposition to be read in evidence. What objections may be taken thereto.

§ 636. Foreign witness, how examined.—When an issue of fact is joined upon an indictment, the defendant may have any material witness residing out of the state, examined in his behalf, as prescribed in this chapter, and not otherwise.

§ 637. When defendant may apply for.—When a material witness for the defendant, resides out of the state, the defendant may apply for an order that the witness be examined on a commission.

Commissions are statutory proceedings solely, and must be strictly pursued. Dwinnelle *v.* Howland, 1 Abb. Pr., 87; Creamer *v.* Jackson, 4 id., 413; McColl *v.* Sun Mut. Ins. Co.,

50 N. Y., 332; 2 J. & Sp., 310. New commissions for examination of same witnesses may issue. Fisher *v.* Dale, 17 Johns., 343; Raney *v.* Weed, 1 Barb., 220; or may be ordered re-executed. Baker *v.* Spencer, 47 N. Y., 562.

§ 638. Commission defined.—A commission is a process issued under the seal of the court, and the signature of the clerk, directed to one or more persons, designated as commissioners, authorizing them to examine the witness upon oath, on interrogatories annexed thereto, and to take and return the deposition of the witness, according to the directions given, with the commission.

§ 639. Application for commission, on what based.—The application must be made upon affidavit, showing:

1. The nature of the crime charged;
2. The state of the proceedings in the action, and that issue of fact has been joined therein;
3. The name of the witness, and that his testimony is material to the defense of the action;
4. That the witness resides out of the state.

Sub. 3. Need not state what proof expected. Eaton *v.* North, 7 Barb., 631; affidavit may be made by agent or attorney, ibid.

§ 640. If during term, to be made to the court.—The application, if made during the term, must be made to the court.

§ 641. If not during term to whom to be made.—If not made during the term, the application may be made as follows:

1. When the indictment is pending in a court of oyer and terminer, or in a court of sessions, except in the city and county of New York, to a judge of the supreme court or to the county judge;
2. When the indictment is pending in the court of general sessions in the city and county of New York, to the recorder or city judge or judge of general sessions, or one of the judges of the court of common pleas, of that city;
3. When the indictment is pending in a city court, to the recorder or judge of the court in which it is pending.

§ 642. Notice of application.— If the application be made to the court, it may be without notice to the district attorney, unless the court direct notice to be given, in which case it must prescribe the manner of giving the same. If made to one of the officers mentioned in the last section, the application must be upon five days' notice to the district attorney, served with a copy of the affidavit upon which it is founded.

§ 643. Order for commission, when granted.— If the court or officer to whom the application is made, be satisfied that the witness resides out of the state, and that his examination is necessary to the attainment of justice, an order must be made that a commission be issued to take his testimony, and that the people be permitted to join in the commission, and to examine witnesses in support of the indictment.

Naming of commissioners. Harris *v.* Wilson, 2 Wend., 627; Townsend *v.* N. Y., Ins., Co., 1 Cai., 4. Who may act as such, Lewis *v.* Van Loon, 3 Cai., 105. Exhibits. Butler *v.* Lee, 32 Barb., 75.

§ 644. Trial to be stayed until return of commission.— If the application for a commission be granted, the court or judge must insert in the order therefor, a direction that the trial of the indictment be stayed for a specified time, reasonably sufficient for the execution and return of the commission.

When stay should be vacated. Voss *v.* Fielden, 2 Sand., 690.

§ 645. Interrogatories, and notice of settlement. — When the commission is ordered, the defendant must serve upon the district attorney, and the district attorney, if he intend to join in the commission and examine witnesses in support of the indictment, must serve upon the defendant or his counsel, a copy of the interrogatories to be annexed thereto, with a notice of two days of their settlement, before an officer who might have granted the order out of term, as provided in section 641.

§ 646. Cross-interrogatories and notice of settlement.— The district attorney, and the defendant,

may, in the same manner, serve cross-interrogatories, to be annexed to the commission, with the like notice of the settlement thereof.

§ 647. What may be inserted in interrogatories.—In the interrogatories, either party may insert any question pertinent to the issue.

See McDonald *v.* Garrison, 2 Hilt., 510; Blaisdell *v.* Raymond, 9 Abb. Pr., 178 n.

§ 648. Id.—Upon the settlement of the interrogatories, the judge must expunge every question not pertinent to the issue, and modify the questions, so as to conform them to the rules of evidence, and when settled, must indorse upon them his allowance, and annex them to the commission.

§ 649. Direction as to return of commission.—Unless the parties otherwise consent, by an indorsement upon the commission, the officer must indorse thereon a direction, as to the manner in which it must be returned; and may, in his discretion, direct that it be returned by mail or otherwise, addressed to the clerk of the court in which the indictment is pending, designating his name and the place where his office is kept.

Unless returned as directed, it cannot be read. Richardson v. Gere, 21 Wend., 156.

§ 650. Commission, how executed.—The commissioners, or any one of them, unless otherwise specially directed, may execute the commission as follows:

1. They must publicly administer an oath to the witness, that his answers given to the interrogatories shall be the truth, the whole truth, and nothing but the truth;

2. They must cause the examination of the witness to be reduced to writing;

3. They must write the answers of the witness, as nearly as possible in the language in which he gives them, and read to him each answer as it is taken down, and correct or add to it, until it is made conformable to what he declares is the truth;

4. If the witness decline answering a question, that

fact, with the reason for which he declines answering it, as he gives it, must be stated;

5. If papers or documents are produced before them, and proved by the witness, they must be annexed to his deposition, and be subscribed by the witness, and certified by the commissioners;

6. The commissioners must subscribe their names to each sheet of the deposition, and annex the deposition, with the papers or documents proved by the witness, to the commission, and must close it up under seal, and address it, as directed thereon.

7. If there be a direction on the commission, to return it by mail, the commissioners must immediately deposit it in the nearest post-office. If any other direction be made, by the written consent of the parties, or by the officer, on the commission, as to its return, they must comply with the direction.

Sub. 1. When witnesses may be sworn by local authorities. Lincoln *v.* Batelle, 6 Wend., 475. Sub. 3. When foreign language may be used. Leetch *v.* Atlantic Mut. Ins. Co., 4 Daly, 518. Sub. 4. Refusal to answer material cross-interrogatory, ground for rejecting entire deposition. Smith *v.* Griffith, 3 Hill, 333. Answer though not full, if not clearly evasive, sufficient. See Baker *v.* Spencer, 47 N. Y., 562; Terry *v.* McNeil, 58 Barb., 241. Sub. 5. Annexing exhibits. Howard *v.* Orient Ins. Co., 9 Bos., 645; Woodruff *v.* Shepherd, 6 Cow., 444. Exhibits, how identified. Brumskill *v.* James, 11 N. Y., 294. Sub. 7. It is no objection that depositions were not immediately mailed. Halleran *v.* Field, 23 Wend., 38; See Pendell *v.* Coon, 20 N. Y., 134.

§ 651. Copy of last section to be annexed to commission.—A copy of the last section must be annexed to the commission.

§ 652. Commission, how returned by an agent.—If the commission and return be delivered by the commissioners to an agent, he must deliver it to the clerk to whom it is directed, or to a judge of the court in which the indictment is pending, by whom it may be received and opened, upon the affidavit of the agent, that he received it from the hands of one of the commissioners, and that it has not been opened or altered since he received it.

Affidavit of agent is indispensable. Dwinelle *v.* Howland, 1 Abb. Pr., 87.

§ 653. Id. — If the agent be dead, or from sickness or other casualty, unable personally to deliver the commission and return, as prescribed in the last section, it may be received by the clerk or judge from any other person, upon his making an affidavit that he received it from the agent, that the agent is dead, or from sickness or other casualty, unable to deliver it, that it has not been opened or altered since the person making the affidavit received it, and that he believes it has not been opened or altered since it came from the hands of the commissioners.

§ 654. When and how filed. — The clerk or judge receiving and opening the commission and return must immediately file it, with the affidavit mentioned in the last two sections, in the office of the clerk of the court in which the indictment is pending.

§ 655. Commission returned by mail, how disposed of. — If the commission and return be transmitted by mail, the clerk to whom it is addressed must open and file it in his office, where it must remain, unless the court otherwise direct.

Deposition cannot be read until actually filed. Parker *v.* Hobby, 20 Johns., 357; Oneida, etc., Society *v.* Lawrence, 4 Cow., 440

§ 656. Commission and return to be open for inspection, and copies to be furnished.—The commission and return must at all times be open to the inspection of the parties, who must be furnished by the clerk with copies of the same, or of any part thereof, on payment of his fees, at the rate of five cents for every hundred words.

§ 657. Deposition to be read in evidence. What objections may be taken thereto. — The deposition, taken under the commission, may be read in evideuce by either party on the trial, and the same objections may be taken to a question in the interrogatories, or to an answer in the deposition, as if the witness had been examined orally in court.

Mere formal defects are to be disregarded. Rust *v.* Eckler, 41 N. Y., 488; Goodyear *v.* Vosburgh, 41 How. Pr., 421; Hall *v.*

Barton, 25 Barb., 274; McCleary *v.* Edwards, 27 ib., 239. Informal parts may be excluded. Commercial Bank *v.* Union Bank, 11 N. Y., 203. Objections must specifically point out errors. Dalton *v.* National, etc., Society, 20 N. Y., 32. When answers will be excluded. See Lansing *v.* Coley, 13 Abb. Pr., 272; Railway, etc., Co. *v.* Warner, 1 S. C., 21, add.; Fassin *v.* Hubbard, 55 N. Y., 465. Heineman *v.* Hurd, 2 Hun, 324; Meyer *v.* Levy, 54 How. Pr., 274. Deposition may be read though witness present, but other side may call and examine him. Phenix *v.* Baldwin, 14 Wend., 62. If answers to direct interrogatory be excluded, those to cross id. dependent thereon must also be. Fleming *v.* Hollenbeck, 7 Barb., 271. Discretionary power of court upon objections. Cope *v.* Sibley, 12 Barb., 521; Hazlewood *v.* Heminway, 3 S. C., 787.

CHAPTER V.

INQUIRY INTO THE INSANITY OF THE DEFENDANT, BEFORE OR DURING THE TRIAL, OR AFTER CONVICTION.

SEC. 658. Appointment of commission; their proceedings.
659. If found insane, trial or judgment suspended, and defendant to be committed to state lunatic asylum, if his discharge be dangerous to the public peace or safety.
660. If defendant committed, bail exonerated or deposit of money refunded.
661. Detention of defendant in asylum, and proceedings on his becoming sane.
662. Expenses incident to sending defendant to asylum, how paid.

§ 658. Appointment of commission; their proceedings.—When a defendant pleads insanity as prescribed in section 336, the court in which the indictment is pending, instead of proceeding with the trial of the indictment, may appoint a commission of not more than three disinterested persons, to examine him and report to the court as to his sanity at the time of the commission of the crime.

If a defendant in confinement, under indictment, appears to be at any time before or after conviction, insane, the court in which the indictment is pending, unless the defendant is under sentence of death, may appoint a like commission to examine him and report to the court as to his sanity at the time of the examination.

The commission must summarily proceed to make their examination. Before commencing they must take the oath prescribed in the Code of Civil Procedure, to be taken by referees. They must be attended by the dis-

trict attorney of the county, and may call and examine witnesses and compel their attendance. The counsel of the defendant may take part in the proceedings. When the commissioners have concluded their examination they must forthwith report the facts to the court with their opinion thereon.

Commissioner's oath. Code Civ. Proc., § 1016.

§ 659. If found insane, trial or judgment suspended, etc.—If the commission find the defendant insane the trial or judgment must be suspended, until he becomes sane; and the court, if it deem his discharge dangerous to the public peace or safety, must order that he be, in the meantime, committed by the sheriff to a state lunatic asylum, and that upon his becoming sane, he be re-delivered by the superintendent of the asylum to the sheriff.

§ 660. Bail exonerated. — The commitment of the defendant, as mentioned in the last section, exonerates his bail, or entitles a person authorized to receive the property of the defendant, to a return of any money he may have deposited instead of bail.

§ 661. Detention and discharge of defendant.—If the defendant be received into the asylum, he must be detained there until he become sane. When he becomes sane, the superintendant must give a written notice of that fact to a judge of the supreme court of the disirict in which the asylum is situated. The judge must require the sheriff without delay to bring the defendant from the asylum, and place him in the proper custody until he be brought to trial, judgment, or execution as the case may be, or be legally discharged.

§ 662. Expenses incident to sending defendant to asylum, how paid.—The expenses of sending the defendant to the asylum, of keeping him there, and of bringing him back, are, in the first instance, chargeable to the county from which he was sent; but the county may recover them from the estate of the defendant, if he have any, or from a relative, town, city, or county, bound to provide for and maintain him elsewhere.

CHAPTER VI.

COMPROMISING CERTAIN CRIMES, BY LEAVE OF THE COURT.

SEC. 663. Certain crimes, for which the party injured has a civil action, may be compromised.
664. Compromise to be by permission of the court. Order thereon.
665. Order, a bar to another prosecution.
666. No public offense to be compromised, except as provided in this chapter.

§ 663. Certain crimes for which the party injured has a civil action may be compromised.—When a defendant is *brought before a magistrate, or* is held to answer on a charge of a misdemeanor, for which the person injured by the act constituting the crime has a remedy by civil action, the crime may be compromised, as provided in the next section, except when it was committed,

1. By or upon an officer of justice while in the execution of the duties of his office;

2. Riotously; or

3. With an intent to commit a felony. [Am'd ch. 63 of 1884.]

§ 664. Compromise to be by permission of the court; order thereon.—If the party injured appear before the *magistrate, or before the* court to which the depositions and statements are required, by section two hundred and twenty-one, to be returned at any time before trial *or commitment by the magistrate, or trial* on indictment for the crime, and acknowledge in writing that he has received satisfaction for the injury, the *magistrate or* court may, in *his or* its discretion, on payment of the costs *and expenses* incurred, if *such magistrate or court* shall see fit so to direct, order all proceedings to be stayed upon the prosecution and the defendant be discharged therefrom. But in that case, the reason for the order must be set forth therein and entered upon the minutes. [Am'd ch. 63 of 1884.]

Cannot compromise after conviction. Peo. *v.* Bishop, 2 Wend., 111. Nor stay trial because civil action pending, but may sentence. Peo. *v.* Judges of Genesee, 13 Johns., 85; Fagan *v.* Knox, 66 N. Y., 525; rev'g 8 J. and Sp., 41.

§ 665. Order a bar to another prosecution.—The order authorized by the last section is a bar to another prosecution for the same offense.

§ 666. No other offense to be compromised.—No crime can be compromised, nor can any proceeding for

the prosecution or punishment thereof upon a compromise, be stayed, except as provided in sections 663 and 664.

CHAPTER VII.

DISMISSAL OF THE ACTION, BEFORE OR AFTER INDICTMENT, FOR WANT OF PROSECUTION OR OTHERWISE.

SEC. 667. Dismissal, when a person held to answer is not indicted at the next term thereafter.
668. When a person indicted is not brought to trial at the next term thereafter.
669. Court may order action to be continued, and in the mean time discharge defendant from custody, on his own undertaking, or on bail.
670. If action dismissed, defendant to be discharged from custody, or his bail exonerated, or deposit of money refunded.
671. Court may order indictment to be dismissed.
672. Nolle prosequi abolished. No indictment to be dismissed or abandoned, except according to this chapter.
673. Dismissal, a bar, in misdemeanor; but not in felony.

§ 667. Dismissal, when no indictment at next term.—When a person has been held to answer for a crime, if an indictment be not found against him, at the next term of the court at which he is held, to answer, the court may on application of the defendant order the prosecution to be dismissed, unless good cause to the contrary be shown.

§ 668. When indictment is not brought to trial at the next term.—If a defendant, indicted for a crime whose trial has not been postponed upon his application, be not brought to trial at the next term of the court in which the indictment is triable, after it is found the court may, on application of the defendant, order the indictment to be dismissed, unless good cause to the contrary be shown.

Peo., etc., *v.* Warden, C. P., 11 W. D., 271.

§ 669. Court may order action to be continued, etc.—If the defendant be not indicted or tried, as provided in the last two sections, and sufficient reason therefor be shown, the court may order the action to be continued from term to term, and in the meantime may discharge the defendant from custody, on his own undertaking, or on the undertaking of bail for his appearance to answer the charge at the time to which the action is continued.

§ 670. If action dismissed, defendant to be discharged, etc.—If the court direct the action to be dismissed, the defendant must, if in custody, be discharged therefrom, or if admitted to bail, his bail is exonerated, or money deposited instead of bail must be refunded to him.

§ 671. Court may order indictment to be dismissed.—The court may, either of its own motion, or upon the application of the district attorney, and in furtherance of justice, order an action, after indictment, to be dismissed.

§ 672. Nolle prosequi abolished.— The entry of a *nolle prosequi* is abolished; and neither the attorney-general, nor the district attorney, can discontinue or abandon a prosecution for a crime, except as provided in the last section.

§ 673. Dismissal, a bar, in misdemeanor, but not in felony.— An order for the dismissal of the action, as provided in this chapter, is a bar to another prosecution for the same offense, if it be a misdemeanor; but it is not a bar, if the offense charged be a felony.

CHAPTER VIII.

REMITTING THE PUNISHMENT, IN CERTAIN CASES.

SEC. 674. Punishment, upon conviction of a master of a vessel from a foreign country.

§ 674. Punishment, when remitted.—When the master of a vessel arriving from a foreign country is convicted of having knowingly brought a person convicted therein of a crime, which, if committed in this state, would be a felony, to a place within the state, the court before which the conviction is had may, if satisfied that the defendant has reconveyed the convict to the place from which he took him, and on payment of the costs of prosecution, order the punishment upon the conviction to be remitted.

CHAPTER IX.

PROCEEDINGS AGAINST CORPORATIONS.

SEC. 675. Summons upon an information or presentment against a corporation, by whom issued, and when returnable.
676. Form of the summons.
677. When and how served.
678. Examination of the charge.
679. Certificate of the magistrate, and return thereof with the depositions.
680. Grand jury may proceed as in the case of a natural person.
681. Appearance, and plea to an indictment, and proceedings thereon.
682. Fine, on conviction, how collected.

§ 675. Information against a corporation.— Upon an information against a corporation, the magistrate must issue a summons, signed by him, with his name of office, requiring the corporation to appear before him, at a specified time and place, to answer the charge; the time to be not less than ten days after the issuing of the summons.

§ 676. Form of the summons.— The summons must be in substantially the following form:

"County of *Albany*. [or as the case may be.]

"In the name of the people of the state of New York:

"To the [naming the corporation.]

"You are hereby summoned to appear before me, at [naming the place,] on [specifying the day and hour,] to answer a charge made against you, upon *the information of A. B.*, for [designating the offense, generally.]

"Dated at the *city*, [or "town,"] of , the day of , 18 .

G. H., *Justice of the peace.*"
[or as the case may be.]

§ 677. When and how served.— The summons must be served at least five days before the day of appearance fixed therein, by delivering a copy thereof and showing the original to the president, or other head of the corporation, or to the secretary, cashier, or managing agent thereof.

§ 678. Examination of the charge.—At the time appointed in the summons, the magistrate must proceed to investigate the charge, in the same manner as in the case of a natural person brought before him, so far as those proceedings are applicable.

§ 679. Certificate of the magistrate and return.—After hearing the proofs, the magistrate must certify upon the depositions, either that there is or is not sufficient cause to believe the corporation guilty of the offense charged, and must return the depositions and certificate, in the manner prescribed in section 221.

§ 680. Grand jury may proceed as in the case of a natural person. — If the magistrate return a certificate that there is sufficient cause to believe the corporation guilty of the offense charged, the grand jury may proceed thereon, as in the case of a natural person held to answer.

§ 681. Appearance, and plea to indictment. — If an indictment be found against a corporation, it may appear by counsel, to answer the same. If it do not thus appear, a plea of not guilty must be entered, and the same proceedings had thereon as in other cases.

§ 682. Fine, on conviction, how collected. — When a fine is imposed upon a corporation, on conviction, it may be collected by virtue of the order imposing it, by the sheriff of the county, out of their real and personal property, in the same manner as upon an execution in a civil action.

CHAPTER X.

ENTITLING AFFIDAVITS.

SEC. 683. Affidavits defectively entitled, valid.

§ 683. Affidavits defectively entitled, valid.—It is not necessary to entitle an affidavit or deposition, in the action, whether taken before or after indictment, or upon an appeal; but if made without a title, or with an erroneous title, it is as valid and effectual for every purpose, as if it were duly entitled, if it intelligibly refer to the proceeding, indictment or appeal in which it is made.

CHAPTER XI.

ERRORS AND MISTAKES, IN PLEADINGS AND OTHER PROCEEDINGS.

SEC. 684. Errors, etc., when not material.

§ 684. Errors, etc., when not material. — Neither a departure from the form or mode prescribed by this Code, in respect to any pleadings or proceedings, nor an error or mistake therein, renders it invalid, unless it have actually prejudiced the defendant, or tend to his prejudice, in respect to a substantial right.

CHAPTER XII.

DISPOSAL OF PROPERTY, STOLEN OR EMBEZZLED.

SEC. 685. When property, alleged to be stolen or embezzled, comes into custody of peace officer.
686. Order for its delivery to owner.
687. When it comes into custody of magistrate, he must deliver it to owner, on proof of title and payment of expenses.
688. Court in which trial is had for stealing or embezzling it, may order it to be delivered to owner.
689. If not claimed in six months, to be delivered to county superintendent of the poor, or in New York, to commissioners of charities and corrections.
690. Receipt for money or property, taken from a person arrested for a public offense.
691. Duties of police clerks in the city of New York, etc.

§ 685. Property stolen or embezzled in custody of officer. — When property, alleged to have been stolen or embezzled, comes into the custody of a peace officer, he must hold it, subject to the order of the magistrate authorized by the next section to direct the disposal thereof.

§ 686. Order for its delivery to owner. — On satisfactory proof of the title of the owner of the property, the magistrate before whom the information is laid, or who examines the charge against the person accused of stealing or embezzling the property, may order it to be delivered to the owner, unless its temporary retention be deemed necessary in furtherance of justice, on his paying the reasonable and necessary expenses incurred

in its preservation, to be certified by the magistrate. The order entitles the owner to demand and receive the property.

§ 687. Magistrate must deliver property to owner, on proof of title and payment of expenses.—If property stolen or embezzled come into the custody of a magistrate, it must, unless its temporary retention be deemed necessary in furtherance of justice, be delivered to the owner, on satisfactory proof of his title, and on his paying the necessary expenses incurred in its preservation, to be certified by the magistrate.

§ 688. Court in which trial is had may order such delivery to owner.—If property stolen or embezzled have not been delivered to the owner, the court before which a trial is had for stealing or embezzling it, may, on proof of his title, order it to be restored to the owner.

§ 689. If not claimed in six months, how disposed of.—If property stolen or embezzled be not claimed by the owner, before the expiration of six months from the conviction of a person for stealing or embezzling it, the magistrate or other officer having it in his custody must, on payment of the necessary expenses incurred in its preservation, deliver it to the county superintendents of the poor, or in the city of New York, to the commissioners of charities and corrections, to be applied for the benefit of the poor of the county or city, as the case may be.

§ 690. Receipt for money or property, taken from a person arrested.—Except in the city of New York, when money or other property is taken from a defendant, arrested upon a charge of a crime, the officer taking it must, at the time, give duplicate receipts therefor, specifying particularly the amount of money or the kind of property taken; one of which receipts he must deliver to the defendant, and the other of which he must forth-

with file with the clerk of the court to which the depositions and statement must be sent, as provided in section 221.

§ 691. Duties of police clerks in the city of New York, etc.—The commissioners of police of the city of New York may designate some person to take charge of all property alleged to be stolen or embezzled, and which may be brought into the police office, and all property taken from the person of a prisoner, and may prescribe regulations in regard to the duties of the clerk or clerks so designated, and to require and take security for the faithful performance of the duties imposed by this section, and it shall be the duty of every officer into whose possession such property may come, to deliver the same forthwith to the person so designated.

CHAPTER XIII.

REPRIEVES, COMMUTATIONS AND PARDONS.

SEC. 692. Power of governor to grant reprieves, commutations and pardons.
693. His power, in respect to convictions for treason. Duty of the legislature, in such cases.
694. Governor to communicate annually to legislature, reprieves, commutations and pardons.
695. Report of case, how, and from whom required.
696. Notice to district attorney, of application for pardon.
697. Publication of notice.
698. Papers relating to application, to be filed with secretary of state.

§ 692. Power of governor to grant reprieves, commutations and pardons.—The governor has power to grant reprieves, commutations and pardons, after conviction, for all offenses, except treason and cases of impeachment, upon such conditions, and with such restrictions and limitations, as he may think proper, subject to the regulations provided in this chapter.

Pardon does not bar other proceedings. Anon, 86 N. Y., 563.

§ 693. His power in respect to convictions for treason. Duty of the legislature, in such cases.—He may also suspend the execution of the sentence, upon a conviction for treason, until the case can be reported to the legislature, at its next meeting, when the legislature

must either pardon or commute the sentence, direct the execution thereof, or grant a further reprieve.

§ 694. Governor to communicate annually to legislature.—He must annually communicate to the legislature, each case of reprieve, commutation or pardon; stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the commutation, pardon or reprieve.

§ 695. Report of case, how and from whom required.—When application is made to the governor for a pardon, *commutation or reprieve, it shall be the duty of* the presiding judge of the court before which the conviction was had, and the district attorney by whom the criminal action was prosecuted, *or the district attorney of the county where the conviction was had, holding office at the time of such application, to supply the governor, upon his request therefor, and* without delay, with a statement of the facts proved on the trial; *or, if a trial was not had, the facts appearing before the grand jury which found the indictment,* and of any other facts having reference to the propriety of granting or refusing such pardon, *commutation or reprieve.* [Am'd ch. 356 of 1884.]

§ 696. Repealed.

§ 697. Repealed.

§ 698. Repealed.

PART V.

OF PROCEEDINGS IN COURTS OF SPECIAL SESSIONS AND POLICE COURTS.

TITLE I. OF THE PROCEEDINGS IN COURTS OF SPECIAL SESSIONS IN THE COUNTIES OTHER THAN NEW YORK.

II. OF THE PROCEEDINGS IN THE COURTS OF SPECIAL SESSIONS IN THE CITY AND COUNTY OF NEW YORK.

III. OF APPEALS FROM THE COURTS OF SPECIAL SESSIONS.

TITLE I.

Of Proceedings in Courts of Special Sessions in the Counties other than New York.

SEC. 699. Charge to be read to defendant, and he required to plead.
700. The plea, and how put in.
701. Issue, how tried.
702. Defendant may demand a trial by jury.
703. Jury, how summoned.
704. Summoning the jury, and returning the list.
705. Depositing ballots in box.
706. Drawing the jury.
707. Challenges.
708. Talesmen, when and how ordered and summoned.
709. Punishing officer for not returning list, and issuing new order for jury.
710. Jury, how constituted.
711. Their oath.
712. Trial, how conducted.
713. Jury may decide in court, or retire. Oath of officer on their retirement.
714. Delivering verdict, and entry thereof.
715. Discharge of jury without verdict.
716. In such case, cause to be re-tried.
717. Judgment on conviction.
718. Judgment of imprisonment, until fine be paid. Extent of imprisonment.
719. Defendant, on acquittal, to be discharged. Order that prosecutor pay the costs.
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721–722. Certificate of conviction. Its form.
723. Certificate, when filed.
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SEC. 725. Judgment, by whom executed.
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727. Fine to whom paid after commitment, and how applied.
728. Proceedings against magistrate or sheriff, on neglect to pay fine into county treasury.
729. Subpœnas for witnesses, and punishing them for disobedience.
730. Punishing jurors for non-attendance.
731. No fees to jurors or witnesses.
732. When defendant requests a trial by police court, preliminary examination dispensed with.
733. During time allowed for bail, and until judgment, defendant to be continued in custody of officer, or committed to jail.
734. Form of commitment.
735. By whom executed.
736. Defendant may be admitted to bail.
737. Bail, how and by whom taken.
738. Form of the undertaking.
739. Undertaking, when forfeited and action thereon.
740. Forfeiture, how and by whom remitted.

§ 699. Charge to be read to defendant, and he required to plead.—In the cases in which the courts of special sessions or police courts have jurisdiction, when the defendant is brought before the magistrate, the charge against him must be distinctly read to him, and he must be required to plead thereto.

§ 700. The plea, and how put in.—The defendant may plead the same pleas as upon an indictment, as provided in section 332. His plea must be oral, and entered upon the minutes of the court.

§ 701. Issue, how tried.—Upon a plea other than a plea of guilty, if the defendant do not demand a trial by jury, the court must proceed to try the issue.

Infant may waive jury trial. Peo. ex rel. Sammons *v.* Wandell, 21 Hun, 515.

§ 702. Defendant may demand a trial by jury.—Before the court hears any testimony upon the trial, the defendant may demand a trial by jury.

Peo. *v.* James, 16 Hun, 426.

§ 703. Jury; how summoned.—If a trial by jury be demanded the court shall issue an order directed to any

constable of the county or marshal of the city where the offense is to be tried and having authority to execute process from the court, commanding him to summon twelve good and lawful men, qualified to serve as jurors, and not exempt from such service by law, and who shall be in no wise of kin, either to the complainant or the defendant, to appear before such court, at a time not more than three days from the date of the order, and at a place to be named therein, to make a jury for the trial of such offense.

§ 704. Summoning the jury, and returning the list.— The officer to whom such order shall be delivered shall execute the same fairly and impartially, and shall not summon any person whom he shall suspect to be biased or prejudiced for or against the defendant. He shall summon the jurors personally, and shall make a list of the persons summoned, which he shall certify and annex to the order and return with it to the court.

§ 705. Depositing ballots in box.— The names of the persons returned as jurors must be written on separate ballots, folded as nearly alike as possible, so that the name cannot be seen, and must, under the direction of the court, be deposited in a box, or other convenient thing.

§ 706. Drawing the jury.— The court must then draw out six of the ballots, successively; and if any of the persons whose names are drawn do not appear, or are challenged and set aside, such further number must be drawn as will make a jury of six, after all legal challenges have been allowed.

See Peo. ex. rel. Eckler *v.* Clark, 23 Hun, 374; Peo. ex. rel. Murray *v.* Justices, etc., 74 N.Y., 406; Peo. ex rel. Met. Bd., etc., *v.* Lane, 6 Abb. N. S., 105; Duffy *v.* Peo., 6 Hill, 75; Devine *v.* Peo., 20 Hun, 98; Peo. *v.* Dutcher, ib., 241.

§ 707. Challenges.— The same challenges may be taken by either party, to the panel of jurors, or to an individual juror, as on the trial of an indictment for a misdemeanor, so far as applicable; and the challenge must, in all cases, be tried by the court.

§ 708. Talesmen, when and how ordered and summoned.— If six of the jurors summoned do not attend, or be not obtained, the court may direct the officer to summon any of the bystanders, or others, who may be competent, and against whom there is no sufficient cause of challenge, to act as jurors.

§ 709. Punishing officer for not returning list; issuing new order for jury.—If the officer to whom the order is delivered do not return it, as required by section 704, he may be punished by the court, as for contempt; and the court must issue a new order for the summoning of jurors, in substantially the same form; upon which the same proceedings must be had as upon the one first issued.

§ 710. Jury, how constituted. — When six jurors appear and are accepted, they constitute the jury.

§ 711. Their oath.—The court must thereupon administer to the jury the following oath or affirmation: "You do "swear," [or "you do solemnly affirm," as the case may be,] "that you will well and truly try this issue, between the people of the state of New York and A. B., the defendant, and a true verdict give, according to the evidence."

§ 712. Trial, how conducted. — After the jury are sworn, they must sit together and hear the proofs and allegations of the parties, which must be delivered in public, and in the presence of the defendant.

§ 713. Jury may decide in court, or retire. Oath of officer. — After hearing the proofs and allegations, the jury may either decide in court or may retire for consideration. If they do not immediately agree, an officer must be sworn to the following effect: "You do swear, that you will keep this jury together in some private and convenient place, without food or drink, except bread and

water, unless otherwise ordered by the court; that you will not permit any person to speak to or communicate with them, nor do so yourself, unless it be to ask them whether they have agreed upon a verdict; and that you will return them into court when they have so agreed, or when ordered by the court."

§ 714. Delivering verdict, and entry thereof.—When the jury have agreed on their verdict, they must deliver it publicly to the court, which must enter it in its minutes.

§ 715. Discharge of jury without verdict.—The jury cannot be discharged, after the cause is submitted to them, until they have agreed upon and rendered their verdict unless, for some cause within the meaning of sections 428 and 429, the court sooner discharge them.

§ 716. When cause to be retried.—If the jury be discharged, as provided in the last section, the court may proceed again to the trial, in the same manner as upon the first trial; and so on, until a verdict is rendered.

§ 717. Judgment on conviction.—When the defendant pleads guilty, or is convicted either by the court or by a jury, the court must render judgment thereon, of fine or imprisonment, or both, as the case may require; but the fine cannot exceed fifty dollars, nor the imprisonment six months.

§ 718. Judgment of imprisonment, until fine be paid. Extent of imprisonment.—A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine be satisfied: specifying the extent of the imprisonment, which cannot exceed one day for every one dollar of the fine.

§ 719. Defendant, on acquittal, to be discharged. Order that prosecutor pay the costs.—When the defend-

ant is acquitted, either by the court or by a jury, he must be immediately discharged; and if the court certify, upon its minutes, or the jury find that the prosecution was malicious or without probable cause, the court must order the prosecutor to pay the costs of the proceedings, or to give satisfactory security, by a written undertaking, with one or more sureties, to pay the same to the county within thirty days after the trial.

§ 720. Judgment against prosecutor for costs.—If the prosecutor do not pay the costs or give security therefor, the court may enter judgment against him for the amount thereof, which may be enforced, in all respects, in the same manner as a judgment rendered by a justice's court held by a justice of the peace.

See Germond *v.* Peo., 1 Hill, 343.

§ 721. Certificate of conviction. Its form.—When a conviction is had, upon a plea of guilty or upon a trial, the court must make and sign a certificate in substantially the following form:

"Court of Special Sessions, or Police Court,

"County of *Albany*. Town of *Berne*, [or as the case may be].

"The People of the state of New York
against
A. B.

January 1, 18 .

"The above-named A. B., having been brought before C. D., justice of special sessions, justice of the peace [or other magistrate, as the case may be] or police justice, of the town [or city or village] of [as the case may be] charged with [briefly designating the offense], and having thereupon pleaded guilty or not guilty, [as the case may be,] and demanded [or "failed to demand," as the case may be,] a jury, and

having been thereupon duly tried, and upon such trial, duly convicted.

It is adjudged that he be imprisoned in the jail of this county days [or "pay a fine of dollars and be imprisoned until it be paid, not exceeding days," or both as the case may be.]

"Dated at the *town* [or "city"] of , the day of , 18 .

C. D.,

Justice of the peace or police justice or other magistrate [as the case may be] of the town [or "city"] of , the " [as the case may be.]"

§ 722. Id. — If the defendant have pleaded guilty, — instead of the second paragraph, the certificate must state substantially as follows: "And the above-named A. B. having been thereupon duly convicted, upon a plea of guilty."

§ 723. Certificate, when filed. — Within twenty days after the conviction, the court must cause the certificate to be filed in the office of the clerk of the county.

§ 724. Certificate conclusive evidence. — The certificate, made and filed as prescribed in the last two sections, or a certified copy thereof, is conclusive evidence of the facts stated therein.

Form. *Ex parte*, Morris, 2 Ed. S. C., 381

§ 725. Judgment, by whom executed. — The judgment must be executed by the sheriff of the county, or by a constable, marshal or policeman of the city, village or town in which the conviction is had, upon receiving a copy of the certificate prescribed in section 721, certified by the court or the county clerk.

§ 726. Fine, by whom received before commitment and how applied.—If a fine imposed be paid before commitment, it must be received by the court, and within thirty days after its receipt paid by such court into the county treasury. [Am'd ch. 392 of 1884.]

§ 727. Id.; after commitment. — If the defendant be committed for not paying a fine, he may pay it to the sheriff of the county, but to no other person; who must in like manner, within thirty days after the receipt thereof, pay it into the county treasury.

§ 728. Proceedings against magistrate or sheriff on neglect to pay fine into the county treasury.—If the court or sheriff receiving the fine, fail to pay it into the county treasury, the county treasurer must immediately commence an action *therefor* against the sheriff or the magistrates *comprising* the court, in the name of the county. [Am'd ch. 392 of 1884.]

§ 729. Subpœnas and punishing their disobedience.— The court may issue subpœnas for witnesses, as provided in section 608, and punish disobedience thereof, as provided in section 619.

§ 730. Punishing jurors for non-attendance. — If a person summoned as a juror fail to appear, he may be punished by a fine not exceeding five dollars imposed by the court, by an order entered in his minutes. The order is deemed a judgment, in all respects, in favor of the poor of the town or city.

§ 731. No fees to jurors or witnesses. — No fees are payable to a juror or witness, for his service or attendance in a court of special sessions.

§ 732. When defendant requests a trial by police court, preliminary examination dispensed with.—When the defendant, upon being brought before the magistrate, requests a trial by a court of special sessions, the preliminary examination of the case is dispensed with.

§ 733. During time allowed for bail, and until judgment, defendant to be continued in custody of officer or committed to jail. — During the time allowed to the defendant to give bail, and until judgment is given, he may be continued in the custody of the officer, or committed to the jail of the county to answer the charge, as the magistrate may direct.

§ 734. Form of commitment.—The commitment must be signed by the magistrate, by his name of office, and must be in substantially the following form:

"The sheriff of the county of , is required to receive and detain A. B., who stands charged before me for [designating the offense, generally], to answer the charge before a court of special sessions in the town [or city] of [as the case may be].

"Dated at the town [or city] of , the day of , 18 .

"C. D., justice of the peace of the town [or city] of ," [as the case may be].

§ 735. By whom executed.—When committed, the defendant must be delivered to the custody of the proper officer, by any peace officer in the county to whom the magistrate may deliver the commitment.

§ 736. Defendant may be admitted to bail.—Either before or after his committal, or upon being committed, the defendant must, if he require it, be admitted to bail.

§ 737. Bail, how and by whom taken.—The bail must be taken by the magistrate, by a written undertaking, executed by the defendant, with one or more sufficient sureties approved by the magistrate, in a sum not exceeding two hundred dollars.

§ 738. Form of the undertaking.—The undertaking must be in substantially the following form:

"A. B., having been duly charged before C. D., a justice of the peace in the town [or city] of [as the case may be], with the offense of [designating the offense generally].

"We undertake jointly and severally, that he shall appear thereon from time to time, until judgment, at a court of special sessions in the town or village [or city] of [as the case may be] competent to try the case,

or that we will pay to the county of [naming the county in which the court is held], the sum of dollars," [inserting the sum fixed by the magistrate.]

"Dated at the town [or city] of ," [as the case may be].

§ 739. Undertaking, when forfeited, and action thereon.—If the defendant fail to appear according to the undertaking, the court, unless a sufficient excuse be shown, must declare the undertaking of bail forfeited, and the county treasurer must immediately commence an action for the recovery of the sum mentioned therein, in the name of the county.

§ 740. Forfeiture, how and by whom remitted.—The county court of the county, or in the city of New York, the court of common pleas of that city, may remit the forfeiture or any part thereof, in the cases and in the manner provided in the Code of Civil Procedure.

Code Civ. Proc., §§ 350–353, 286, 294.

TITLE II.

Of the Proceedings in the Court of Special Sessions in the City and County of New York.

Sec. 741. Police courts in New York, to proceed as prescribed in last title, except as provided in next seven sections.
742. In what cases to proceed to trial.
743. If jury demanded, magistrate to proceed to examination of charge.
744. Trial to be before the court, without a jury.
745. Clerk to issue subpœnas, sign certificate of judgment, and enter proceedings of court and sentences upon convictions.
746. Fines before committal, to be paid to clerk. His accounts, when and to whom rendered.
747. All other fines to be paid to sheriff. His account thereof, when and to whom rendered.
748. No transcript of conviction to be filed. Certified copy of minutes, conclusive evidence.

§ 741. Police courts in New York.—The court of special sessions, in the city and county of New York,

must proceed upon a criminal charge in the manner prescribed in the last title, except as provided in the next seven sections, and by special statutes.

§ 742. When to proceed to trial.—When the court of special sessions in the city and county of New York has jurisdiction, it must proceed to the trial, in the following cases:

1. When the defendant has requested to be tried in such court;

2. When (having omitted for twenty-four hours to give bail, as required by the magistrate before whom he was brought, for his appearance at the next court of general sessions of the city and county of New York) a jury is not demanded by him, on being brought before the court of special sessions for trial.

§ 743. If jury demanded, magistrate to proceed to examination of charge.—If, in the case mentioned in the second subdivision of the last section, a jury be demanded, the court of special sessions must proceed to the examination of the charge, and hold the defendant to answer or discharge him, in same manner as the magistrate before whom he was originally brought might have done.

§ 744. Trial to be before court, without a jury.—The trial must, in all cases, be before the court without a jury.

§ 745. Clerks' duties.—Subpœnas for witnesses, and the certificate of the judgment, must be signed by the clerk of the court, who must also enter all the proceedings of the court, and the sentences upon convictions, in a book of minutes, and when necessary, certify the proceedings of the court.

§ 746. Fines before committal; clerks' accounts.—Fines, imposed by the court, must be received by the clerk, if paid before committal in execution of the judg-

ment. He must, every thirty days, render to the comptroller of the city, accounts of the fines imposed and received by him, and of the expenses attending the court.

§ 747. Other fines. Sheriff's accounts.—All fines, not paid to the clerk, as provided in the last section, must be received by the sheriff of the city and county of New York; who must, within thirty days thereafter, pay them to the comptroller of the city, in the same manner as he is required to pay fines imposed by the court of general sessions of the city and county of New York, and received by him.

§ 748. No transcript of conviction. Certified copy of minutes, conclusive.— No transcript of a conviction, had in a court of special sessions in the city and county of New York, need be certified or filed; but a copy of the minutes of the conviction, certified by the clerk, is conclusive evidence of the facts contained therein.

TITLE III.

Of Appeals from Courts of Special Sessions.

SEC. 749. Judgment of special sessions, reviewable only upon appeal.
750. Appeal, for what causes allowed.
751. Appeal, how taken.
752. How allowed.
753. Discharge of defendant from custody, upon undertaking.
754. Undertaking, when and with whom filed.
755. Delivery of affidavit, and allowance of appeal, to magistrate or clerk of police court, within five days after allowance.
756. Return, when and how made.
757. Compelling return.
758. Ordering and compelling further or amended return.
759. Appeal, by whom and how brought to argument.
760. If not brought to argument, as provided in last section, to be dismissed, unless continued for cause shown.
761. Service of return on district attorney, and consequences of failure.

SEC. 762. If brought to hearing by defendant, appeal must be argued, though no one oppose, etc.
763. Appeal to be heard on original return.
764. What judgment may be rendered.
765. Judgment to be entered on the minutes.
766. Order upon judgment for affirmance.
767. Order upon judgment of reversal.
768. If new trial ordered, to be had in court of sessions. Proceedings thereon.
769. Proceedings to carry judgment upon appeal into effect, to be had in court of sessions.
770. On judgment of court of sessions, defendant may appeal to supreme court. His admission to bail.
771. Judgment of supreme court upon appeal, final.
772. Proceedings to carry into effect judgment of supreme court.

§ 749. Judgment of special sessions, etc., reviewable only by appeal.—A judgment upon conviction rendered by a court of special sessions, *police court, police magistrate, or justice of the peace, in any criminal action or proceedings or special proceeding of a criminal nature,* may be reviewed by the court of sessions of the county, upon an appeal as prescribed by this title, and not otherwise. *And any appeal heretofore taken and allowed from a judgment of any police court or police magistrate in the manner that appeals are directed to be taken and allowed by this title, and now pending undetermined in any court of this state, are hereby declared to be legal and valid, and of the same force and effect as if taken after the passage of this act.* [Am'd ch. 372 of 1884.]

§ 750. Appeal, for what causes allowed.—An appeal may be allowed for an erroneous decision or determination of law or fact upon the trial.

§ 751. Appeal, how taken.—For the purpose of appealing, the defendant, or some one on his behalf, must, within ten days after the judgment, make an affidavit, stating the fact showing the alleged errors in the proceedings or conviction complained of, and must, within that time, present it to the county judge or a judge of the supreme court, or in the city and county of New York, to the recorder or city judge or judge of general sessions of that city, and may apply thereon for the allowance of the appeal.

§ 752. How allowed.—If, in the opinion of the judge, it is proper that the question arising on the appeal should be decided by the court of sessions, he must indorse on the affidavit an allowance of the appeal to that court.

§ 753. Discharge of defendant from custody, upon undertaking.—Upon allowing the appeal, the judge may take from the defendant, a written undertaking, with such sureties as he may approve, that the defendant will abide the judgment of the court of sessions upon the appeal; and may thereupon order that he be discharged from imprisonment, on service of the order upon the officer having him in custody, or if he be not in custody, that all proceedings on the judgment be stayed.

§ 754. Filing undertaking.—The undertaking upon the appeal must be immediately filed with the clerk of the court of sessions.

§ 755. Delivery of affidavit, and allowance of appeal.—The affidavit and allowance of the appeal must be delivered to the magistrate who tried the action, or, if in the city and county of New York, to the clerk of the court of special sessions, within five days after the allowance of the appeal; and when so delivered, the appeal is deemed taken.

§ 756. Return, when and how made.—The magistrate or court rendering the judgment, must make a return to all the matters stated in the affidavit, and must cause the affidavit and return to be filed in the office of the clerk of the court of sessions, within ten days after the service of the affidavit and allowance of the appeal.

§ 757. Compelling return.—If the return be not made within the time prescribed in the last section, the court of sessions, or the presiding judge thereof, may order that a return be made within a specified time which may be deemed reasonable; and the court may, by attachment, compel a compliance with the order.

§ 758. Ordering amended return.—If the return be defective, a further or amended return may be ordered, and the order may be enforced in the manner provided in the last section.

§ 759. Appeal, by whom and how brought to argument.—When the return is made, the appeal may be brought to argument by the defendant, on any day in term, upon a notice of not less than five days before the term, to the district attorney of the county.

§ 760. If not brought to argument, to be dismissed, unless continued.—If the defendant omit to bring the appeal to argument, as provided in the last section, the court must dismiss it, unless it continue the same, by special order, for cause shown.

§ 761. Service of return on district attorney, and consequences of failure.— The defendant must serve upon the district attorney, a copy of the return, with or before the notice of argument. If he fail to do so, the appeal must be dismissed, upon proof of the failure, unless the court otherwise direct.

§ 762. When appeal must be argued.—If the appeal be brought to hearing by the defendant, it must be argued, though no one appear to oppose; but if brought on by the district attorney, he may take judgment of affirmance, unless the defendant appear to argue the appeal.

§ 763. Appeal to be heard on original return.— The appeal must be heard upon the original return; and no copy thereof need be furnished for the use of the court.

§ 764. What judgment may be rendered.—After hearing the appeal, the court must give judgment, without regard to technical errors or defects, which have not prejudiced the substantial rights of the defendants, and may render the judgment which the court below should have rendered, or may, according to the justice of the case, affirm or reverse the judgment in whole or in part, as to all or any of the defendants, if there be more than one, or may order a new trial, or may modify the sentence.

§ 765. Judgment to be entered on the minutes.— When judgment is given upon the appeal, it must be entered upon the minutes.

§ 766. Order upon judgment for affirmance.—If the judgment be affirmed, the court must direct its execution, and if the defendant have been discharged on bail, after the commencement of the execution of a judgment of imprisonment, must commit him to the proper custody for the remainder of his term of imprisonment.

§ 767. Order upon judgment of reversal.—If the judgment be reversed, and the defendant be imprisoned in pursuance of the judgment of the police court, the court of sessions must order him to be discharged.

§ 768. If new trial ordered, to be had in court of sessions.—If a new trial be ordered, it must be had in the court of sessions, in the same manner as upon an issue of fact on an indictment; and that court may proceed to judgment and execution, as in an action prosecuted by indictment.

§ 769. Proceedings after judgment upon appeal to be had in court of sessions.—If any proceedings be necessary to carry the judgment upon the appeal into effect, they must be had in the court of sessions.

§ 770. Defendant may appeal to supreme court and give bail.—If the judgment on the appeal be against the defendant, he may appeal therefrom to the supreme court, in the same manner as from a judgment in an action prosecuted by indictment, and may be admitted to bail upon the appeal, in like manner.

§ 771. Judgment of supreme court upon appeal, final.—The judgment of the supreme court upon the appeal is final.

§ 772. Proceedings to carry into effect judgment of supreme court.—The same proceedings must be had, to carry into effect the judgment of the supreme court upon the appeal, as if it had been taken upon a judgment in an action prosecuted by indictment.

PART VI.

OF SPECIAL PROCEEDINGS OF A CRIMINAL NATURE.

TITLE I. OF CORONERS' INQUESTS, AND THE DUTIES OF CORONERS.
II. OF SEARCH WARRANTS.
III. OF THE OUTLAWRY OF PERSONS CONVICTED OF TREASON.
IV. OF PROCEEDINGS AGAINST FUGITIVES FROM JUSTICE.
V. OF PROCEEDINGS RESPECTING BASTARDS.
VI. OF PROCEEDINGS RESPECTING VAGRANTS.
VII. OF PROCEEDINGS RESPECTING DISORDERLY PERSONS.
VIII. OF PROCEEDINGS RESPECTING THE SUPPORT OF POOR PERSONS.
IX. OF PROCEEDINGS RESPECTING MASTERS, APPRENTICES, AND SERVANTS.
X. OF CRIMINAL STATISTICS.
XI. MISCELLANEOUS PROVISIONS RESPECTING PROCEEDINGS OF A CRIMINAL NATURE.

TITLE I.

Of Coroners' Inquests, and the Duties of Coroners.

SEC. 773. In what cases coroner to summon a jury. Number of jurors to be summoned.
774. Jury to be sworn.
775. Witnesses to be subpœnaed.
776. Compelling attendance of witnesses, and punishing their disobedience.
777. Verdict of the jury.
778. Testimony, how taken and filed.
779. If defendant arrested before inquisition filed, depositions to be delivered to magistrate, and by him returned.
780. Warrant for arrest of party charged by verdict.
781. Form of warrant.
782. Warrant, how executed.
783. Proceedings of magistrate, on defendants being brought before him.
784. Clerk with whom inquisition is filed, to furnish magistrate with copy of the same and of testimony returned therewith.

SEC. 785. Coroner to deliver money or property found, on deceased, to county treasurer.
786. County treasurer to place money to credit of county; and to sell other property and place proceeds to credit of county.
787. Money, when and how paid to representatives of deceased.
788. Supervisors to require statement under oath, from coroner, before auditing his accounts.
789. In New York, police justices may perform duties of coroner, during his inability.
790. Compensation of coroners.

§ 773. Coroner's jury.— When a coroner is informed that a person has been killed or dangerously wounded by another, or has suddenly died, under such circumstances as to afford a reasonable ground to suspect that his death has been occasioned by the act of another, by criminal means, or has committed suicide, he must go to the place where the person is, and forthwith summon not less than nine, nor more than fifteen persons, qualified by law to serve as jurors, to appear before him forthwith, at a specified place, to inquire into the cause of the death or wound.

§ 774. Jury to be sworn.— When six or more of the jurors appear, they must be sworn by the coroner to inquire who the person was, and when, where and by what means he came to his death or was wounded, as the case may be, and into the circumstances attending the death or wounding, and to render a true verdict thereon, according to the evidence offered to them, or arising from the inspection of the body.

§ 775. Witnesses to be subpœnaed.— The coroner may issue subpœnas for witnesses, returnable forthwith, or at such time and place as he may appoint. He must summon and examine as witnesses, every person who, in his opinion, or that of any of the jury, has any knowledge of the facts; and he must summon as a witness a surgeon or physician, who must, in the presence of the jury, inspect the body, and give a professional opinion as to the cause of the death or wounding.

§ 776. Compelling attendance of witnesses, and punishing their disobedience.— A witness served with a subpœna may be compelled to attend and testify, or punished by the coroner for disobedience, as upon a subpœna issued by a magistrate, as provided in this Code.

See § 619, *supra*; Code Civ. Proc., §§ 8–13, 853–863.

§ 777. Verdict of the jury.— After inspecting the body, and hearing the testimony, the jury must render their verdict, and certify it by an inquisition in writing, signed by them, and setting forth who the person killed or wounded is, and when, where, and by what means he came to his death or was wounded; and if he were killed or wounded, or his death were occasioned by the act of another, by criminal means, who is guilty thereof, in so far as by such inquisition they have been able to ascertain.

§ 778. Testimony, how taken and filed.— The testimony of the witnesses examined before the coroner's jury must be reduced to writing by the coroner, or under his direction, and must be forthwith filed by him, with the inquisition, in the office of the clerk of the court of sessions of the county, or of a city court, having power to inquire into the offense by the intervention of a grand jury.

§ 779. If defendant arrested before inquisition filed, depositions to be delivered to magistrate.— If, however, the defendant be arrested before the inquisition can be filed, the coroner must deliver it with the testimony, to the magistrate before whom the defendant is brought, as provided in section 781, who must return it with the depositions and statement taken before him, in the manner prescribed in section 221.

§ 780. Warrant for arrest of party charged by verdict.— If the jury find that the person was killed or wounded by another, under circumstances not excusable

or justifiable by law, or that his death was occasioned by the act of another, by criminal means, and the party committing the act be ascertained by the inquisition, and be not in custody, the coroner must issue a warrant, signed by him with his name of office, into one or more counties, as may be necessary, for the arrest of the person charged.

§ 781. **Form of warrant.**— The coroner's warrant must be in substantially the following form:

"County of *Albany*, [or as the case may be].

"In the name of the people of the state of New York:

"To any peace officer in this state:

"An inquisition having been this day found by a coroner's jury, before me, stating that *A. B. has come to his death by the act of C. D., by criminal means*, [or as the case may be, as found by the inquisition]:

"You are therefore commanded, forthwith to arrest the above-named C. D., and take him before the nearest and most accessible magistrate in this county."

"Dated at the *city of Albany* [or as the case may be], the day of , 18 .

"E. F.,
Coroner of the county of *Albany*"
[or as the case may be].

§ 782. **Warrant, how executed.** — The coroner's warrant may be served in any county; and the officer serving it must proceed thereon, in all respects, as upon a warrant of arrest on an information; except, that when served in another county, it need not be indorsed by a magistrate of that county.

§ 783. **Proceedings before magistrate.** — The magistrate, when the defendant is brought before him, must proceed to examine the charge contained in the inquisition, and hold the defendant to answer, or discharge him therefrom in the same manner, in all respects, as upon a warrant of arrest on an information.

§ 784. Clerk to furnish magistrate with copy of the inquisition and testimony.—Upon the arrest of the defendant, the clerk with whom the inquisition is filed must, without delay, furnish to the magistrate a certified copy of it, and of the testimony returned therewith.

§ 785. Coroner to deliver money or property found, on deceased, to county treasurer.—The coroner must, within thirty days after an inquest upon a dead body, deliver to the county treasurer, any money or other property which may be found upon the body, unless claimed in the meantime by the legal representatives of the deceased. If he fail to do so, the treasurer may proceed against him for its recovery, by a civil action in the name of the county.

§ 786. County treasurer to place money to credit of county, etc.—Upon the delivery of money to the treasurer he must place it to the credit of the county. If it be other property, he must, within thirty days, sell it at public auction, upon reasonable public notice; and must, in like manner, place the proceeds to the credit of the county.

§ 787. Money, when and how paid to representatives of deceased.—If the money in the treasury be demanded within six years, by the legal representatives of the deceased, the treasurer must pay it to them, after deducting the fees and expenses of the coroner and of the county, in relation to the matter, or it may be so paid at any time thereafter, upon the order of the board of supervisors.

§ 788. Statement under oath from coroner, before his account is audited.—Before auditing and allowing the account of the coroner, the board of supervisors must require from him a statement in writing, of any money or other property found upon persons on whom inquests have been held by him, verified by his oath, to the effect that the statement is true and that the money or property mentioned in it has been delivered to the legal representatives of the deceased, or to the county treasurer.

§ 789. When New York police justices may act as coroners.—In the city of New York, if the coroner be absent or be unable, for any cause, to attend, the duties imposed by this title may be performed by a police justice, but by no other officer, with the same authority, and subject to the same obligations and penalties as applied to the coroner.

§ 790. Compensation of coroners.—The coroner is entitled, for his services, in holding inquests and performing any other duty incidental thereto, to such compensation as defined by special statutes.

TITLE II.

Of Search Warrants.

SEC. 791. Search warrant defined.
792. Upon what grounds it may be issued.
793. It cannot be issued but upon probable cause, supported by affidavit.
794. Before issuing warrant, magistrate must examine, on oath, the complainant and his witnesses.
795. Depositions, what to contain.
796. Magistrate, when to issue warrant.
797. Form of the warrant.
798. By whom served.
799. Officer may break open door or window, to execute warrant.
800. May break open door or window, to liberate person acting in his aid, or for his own liberation.
801. When warrant may be served in the night time, and direction therefor.
802. Within what time warrant must be executed and returned.
803. Officer to give receipt for property taken.
804. Property, when delivered to magistrate, how disposed of.
805. Return of warrant, and delivery to magistrate of inventory of property taken.
806. Magistrate to deliver copy of inventory to the person from whose possession property is taken, and to applicant for warrant.
807. If grounds for warrant controverted, magistrate to take testimony.
808. Testimony, how taken and authenticated.

Sec. 809. Property, when to be restored to person from whom it was taken.
810. Depositions, search warrant, return and inventory, to be returned to court of sessions or city court having jurisdiction of offense.
811. Maliciously and without probable cause procuring search warrant, a misdemeanor.
812. Peace officer, exceeding his authority.
813. Person charged with felony supposed to have a dangerous weapon.

§ 791. Search warrant defined. — A search warrant is an order in writing, in the name of the people, signed by a magistrate, directed to a peace officer, commanding him to search for personal property, and bring it before the magistrate.

§ 792. Upon what grounds it may be issued. — It may be issued upon either of the following grounds:

1. When the property was stolen or embezzled; in which case, it may be taken, on the warrant, from any house or other place in which it is concealed, or from the possession of the person by whom it was stolen or embezzled, or of any other person in whose possession it may be;

2. When it was used as the means of committing a felony; in which case, it may be taken, on the warrant, from any house or other place in which it is concealed, or from the possession of the person by whom it was used in the commission of the crime, or of any other person in whose possession it may be;

3. When it is in the possession of any person, with the intent to use it as the means of committing a public offense, or in the possession of another, to whom he may have delivered it for the purpose of concealing it, or preventing its being discovered; in which case, it may be taken, on the warrant, from such person, or from a house or other place occupied by him, or under his control, or from the possession of the person to whom he may have so delivered it.

To discover lottery tickets. Peo. *v.* Noelke, 29 Hun, 461.

§ 793. It cannot be issued but upon probable cause, supported by affidavit. — A search warrant cannot be issued, but upon probable cause, supported by affidavit, naming or describing the person, and particularly describing the property, and the place to be searched.

§ 794. Before issuing warrant, magistrate must examine, on oath, the complainant and his witnesses. — The magistrate must, before issuing the warrant, examine, on oath, the complainant and any witnesses he may produce, and take their depositions in writing, and cause them to be subscribed by the parties making them.

§ 795. Depositions, what to contain. — The depositions must set forth the facts tending to establish the grounds of the application, or probable cause for believing that they exist.

§ 796. Magistrate, when to issue warrant. — If the magistrate be thereupon satisfied of the existence of the grounds of the application, or that there is probable cause to believe their existence, he must issue a search warrant, signed by him with his name of office, to a peace officer in his county, commanding him forthwith to search the person or place named, for the property specified, and to bring it before the magistrate.

§ 797. Form of the warrant.—The warrant must be in substantially the following form:

"County of *Albany*, [or as the case may be.]

"In the name of the people of the state of New York:

"To any peace officer in the county of *Albany*, [or as the case may be] proof by affidavit, having been this day made before me, by [naming every person whose affidavit has been taken,] that [stating the particular grounds of the application, according to section 792; or if the affidavits be not positive, "that there is probable cause for believing that,"—stating the ground of the application in the same manner;]

"You are therefore commanded, in the day time, [or "at any time of the day or night," as the case may be, according to section 801,] to make immediate search *on the person of C. D.*, [or "in the building situated"—describing it or any other place to be searched with reasonable particularity, as the case may be,] for the following property: [describing it with reasonable particularity;] and if you find the same or any part

thereof, to bring it forthwith before me, at [stating the place.]

"Dated at the city of *Albany*, [or as the case may be] the day of , 18 .

"E. F.,
Justice of the peace of the *city* [or town] of [or as the case may be.]

See Johnson *v.* Comstock, 14 Hun, 238.

§ 798. By whom served.—A search warrant may, in all cases, be served by any of the officers mentioned in its direction, but by no other person, except in aid of the officer, on his requiring it, he being present and acting in its execution.

§ 799. Officer may break open door or window, to execute warrant.—The officer may break open an outer or inner door or window of a building, or any part of the building, or anything therein, to execute the warrant, if, after notice of his authority and purpose, he be refused admittance.

Bell *v.* Clapp, 10 Johns., 263.

§ 800. May break open door or window, to liberate himself or person acting in his aid.—He may break open any outer or inner door or window of a building, for the purpose of liberating a person, who, having entered to aid him in the execution of the warrant, is detained therein, or when necessary for his own liberation.

§ 801. When warrant may be served in the night time.—The magistrate must insert a direction in the warrant, that it be served in the day time, unless the affidavits be positive that the property is on the person, or in the place to be searched; in which case, he may insert a direction that it be served at any time of the day or night.

§ 802. When warrant must be executed and returned.—A search warrant must be executed, and

returned to the magistrate by whom it was issued, if issued in the city and county of New York, within five days after its date, and if in any other county, within ten days. After the expiration of those times respectively, the warrant, unless executed, is void.

§ 803. **Officer to give receipt for property taken.**—When the officer takes property under the warrant, he must give a receipt for the property taken, (specifying it in detail,) to the person from whom it was taken by him, or in whose possession it was found, or, in the absence of any person, he must leave it in the place where he found the property.

§ 804. **Property when delivered to magistrate, how disposed of.**—When the property is delivered to the magistrate, he must, if it was stolen or embezzled, dispose of it as provided in sections 687 to 689, both inclusive. If it were taken on a warrant issued on the grounds stated in the second and third subdivisions of section 792, he must retain it in his possession, subject to the order of the court to which he is required to return the proceedings before him, or of any other court in which the offense, in respect to which the property was taken, is triable.

§ 805. **Return of warrant, and delivery to magistrate of inventory of property taken.**—The officer must forthwith return the warrant to the magistrate, and deliver to him a written inventory of the property taken, made publicly, or in the presence of the person from whose possession it was taken and of the applicant for the warrant, if they be present, verified by the affidavit of the officer, and taken before the magistrate, to the following effect: "I, A. B., the officer by whom this warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant."

§ 806. **Magistrate to deliver copy of inventory to the parties.**—The magistrate must thereupon, if re-

quired, deliver a copy of the inventory to the person from whose possession the property was taken, and to the applicant for the warrant.

§ 807. **If grounds for warrant controverted, magistrate to take testimony.**— If the grounds on which the warrant was issued be controverted, the magistrate must proceed to take testimony in relation thereto.

§ 808. **Testimony, how taken and authenticated.**— The testimony given by each witness must be reduced to writing and authenticated in the manner prescribed in section 200.

§ 809. **Property, when to be returned.**— If it appear that the property taken is not the same as that prescribed in the warrant, or that there is no probable cause for believing the existence of the grounds on which the warrant was issued, the magistrate must cause it to be restored to the person from whom it was taken.

§ 810. **Return to be made to court of sessions or city court having jurisdiction.**— The magistrate must annex together the depositions, the search warrant and return, and the inventory, and return them to the next court of sessions of the county, or city court, having power to inquire into the offense in respect to which the search warrant was issued, by the intervention of a grand jury, at or before its opening on the first day.

§ 811. **Maliciously procuring search warrant, a misdemeanor.** — A person, who maliciously and without probable cause, procures a search warrant to be issued and executed, is guilty of a misdemeanor.

§ 812. **Peace officer, exceeding his authority.**— A peace officer, who, in executing a search warrant, willfully exceeds his authority, or exercises it with unnecessary severity, is guilty of a misdemeanor.

§ 813. Person charged with felony supposed to have a dangerous weapon, etc.—When a person charged with a felony is supposed by the magistrate before whom he is brought, to have upon his person a dangerous weapon, or any thing which may be used as evidence of the commission of the offense, the magistrate may direct him to be searched in his presence, and the weapon or other thing to be retained, subject to his order or the order of the court in which the defendant may be tried.

TITLE III.

Of the Outlawry of Persons Convicted of Treason.

SEC. 814. When application for outlawry may be made.
815. On what proof to be made.
816. Order that the defendant appear to receive judgment, or be outlawed.
817. Publication of order.
818. Judgment on appearance of defendant, or on his not appearing
819. Effect of the judgment.
820. Filing judgment roll, and transcripts thereof.
821. Judgment roll, of what to consist.
822. Appeal may be at any time taken, by defendant, from judgment.
823. Appeal, how taken, and proceedings thereon.
824. Effect of reversal.
825. Defendant may be arrested to receive judgment, notwithstanding outlawry.
826. No other proceeding for outlawry in criminal cases allowed.

§ 814. When application for outlawry may be made.—When, upon a bench warrant issued for the apprehension of a person who has pleaded guilty, or against whom a verdict has been rendered, upon an indictment for treason, it is duly returned that the defendant cannot be found, the district attorney of the county may apply to the court in which the conviction was had, for judgment of outlawry.

§ 815. On what proof to be made.—The application must be founded upon the return of the bench warrant, and upon proof, by affidavit, that the defendant has escaped, and on diligent search cannot be found within the county.

§ 816. Order that the defendant appear to receive judgment, or be outlawed. — The court, upon being satisfied that the defendant has escaped, and cannot, upon diligent search, be found in the county, must make an order that he appear on the first day of the next term, to receive judgment upon the conviction or be outlawed.

§ 817. Publication of Order. — The order must be immediately published, once a week for six successive weeks, in a newspaper published in the county, and in the state paper. The expense of the publication is a county charge.

§ 818. Judgment on appearance of defendant, or default. — If the defendant appear, judgment must be rendered against him upon the conviction. If he do not appear, the court, upon proof of the due publication of the order, must render judgment that the defendant be outlawed, and that all his civil rights be forfeited.

§ 819. Effect of the judgment. — The defendant is thereupon deemed civilly dead, and forfeits to the people of this state during his life-time, and no longer, all freehold estate in real property, of which he was seized in his own right, at the time of committing the treason, or at any time thereafter, and all his personal property

§ 820. Filing judgment roll, and transcripts thereof. — Upon a judgment of outlawry, the judgment roll must be made up, and filed with the clerk of the county in which the conviction was had, and docketed with the same effect as in a civil action. A transcript thereof may also be filed and docketed, with the like effect, in any other county.

§ 821. Judgment roll, of what to consist. — The judgment roll consists of the several matters prescribed in section 485, except the fifth subdivision; to which must

be annexed a certified copy of the order to appear for judgment, the affidavits proving its publication, and a certified copy of the judgment of outlawry.

§ 822. Appeal may be at any time taken, by defendant, from judgment. — An appeal may be taken by the defendant, at any time, from a judgment of outlawry.

§ 823. Appeal, how taken and proceedings thereon. — The appeal may be taken in person or by counsel, in the same manner, and the proceedings thereon are the same, as upon an appeal from a judgment of conviction on an indictment.

§ 824. Effect of reversal. — If the judgment be reversed, on appeal, the defendant is restored to his civil rights.

§ 825. Defendant may be arrested to receive judgment, notwithstanding outlawry. — Notwithstanding judgment of outlawry against the defendant, he may be arrested at any time thereafter, to receive judgment upon the conviction.

§ 826. No other proceeding for outlawry in criminal cases, allowed. — No other proceeding for the outlawry of the defendant in a criminal action, can be had than that provided in this title.

TITLE IV.

Of Proceedings against Fugitives from Justice.

CHAPTER I. Fugitives from another state or territory, into this state.
II. Fugitives from this state, into another state or territory.

CHAPTER I.

FUGITIVES FROM ANOTHER STATE OR TERRITORY, INTO THIS STATE.

SEC. 827. To be delivered up by the governor, on demand of the executive authority of the state or territory from which they have fled.
828. Magistrate to issue warrant.
829. Proceedings for arrest and commitment of the person charged.
830. When, and for what time to be committed.
831. His admission to bail.
832. Magistrate to give notice to the district attorney, of the name of the person and the cause of his arrest.
833. District attorney to give notice to executive authority of the state or territory, etc.
834. Person arrested to be discharged, unless surrendered within the time limited.
835. Magistrate to return his proceedings to the next court of sessions. Proceedings thereon.

§ 827. Requisitions from other states, etc. — A person charged in any state or territory of the United States, with treason, felony, or other crime, who shall flee from justice and be found in this state, must on demand of the executive authority of the state or territory from which he fled, be delivered up by the governor of this state, to be removed to the state or territory having jurisdiction of the crime.

§ 828. Magistrate to issue warrant. — A magistrate may issue a warrant for the apprehension of a person so charged, who shall flee from justice and be found within this state.

§ 829. Proceedings for arrest and commitment of the person charged. — The proceedings for the arrest and commitment of the person charged are in all respects similar to those provided in this Code, for the arrest and commitment of a person charged with a public offense committed in this state; except, that an exemplified copy of an indictment found, or other judicial proceeding had against him, in the state or territory in which he is charged to have committed the offense, may be received as evidence before the magistrate.

§ 830. When, and for what time to be committed. — If, from the examination, it appear that the person charged has committed the crime alleged, the magistrate, by warrant reciting the accusation, must commit him to the proper custody in his county, for a time specified in the warrant, which the magistrate deems reasonable, to enable the arrest of the fugitive under the warrant of the executive of this state, on the requisition of the executive authority of the state or territory in which he committed the offense, unless he give bail, as provided in the next section, or until he be legally discharged.

§ 831. His admission to bail. — A judge of the supreme court may admit the person arrested, to bail, by an undertaking, with sufficient sureties and in such sum as he deems proper, for his appearance before him at a time specified in the undertaking, and for his surrender to be arrested upon the warrant of the governor of this state.

§ 832. Magistrate to notify the district attorney. — Immediately upon the arrest of the person charged, the magistrate must give notice to the district attorney of the county, of the name of the person and the cause of his arrest.

§ 833. District attorney to give notice to executive authority of the state, etc. — The district attorney must immediately thereafter give notice to the executive authority of the state or territory, or to the prosecuting attorney, or presiding judge of the criminal court of the city or county therein, having jurisdiction of the offense, to the end that a demand may be made for the arrest and surrender of the person charged.

§ 834. Person arrested to be discharged, unless duly surrendered. — The person arrested must be discharged from custody or bail, unless before the expiration of the time designated in the warrant or undertaking, he be arrested under the warrant of the governor of this state.

§ 835. Magistrate to return his proceedings to the next court of sessions. Proceedings thereon. — The magistrate must return his proceedings to the next court of sessions of the county, which must thereupon inquire into the cause of the arrest and detention of the person charged; and if he be in custody, or the time for his arrest have not elapsed, it may discharge him from detention, or may order his undertaking of bail to be canceled, or continue his detention for a longer time, or re-admit him to bail, to appear and surrender himself within a time specified in the undertaking.

CHAPTER II.

FUGITIVES FROM THIS STATE, INTO ANOTHER STATE OR TERRITORY.

SEC. 836. Accounts of persons employed in procuring the surrender of fugitives from this state, how paid.
837. No public officer of this state, to receive compensation for procuring demand or surrender of fugitive, &c.

§ 836. Repealed.

§ 837. Repealed.

TITLE V.

Of Proceedings respecting Bastards.

CHAPTER I. Proceedings before magistrates, respecting bastards.
II. Appeals from the orders of magistrates, respecting bastards.
III. Enforcement of the undertaking for the support of the bastard or its mother, or for appearance on appeal.

CHAPTER I.

PROCEEDINGS BEFORE MAGISTRATES, RESPECTING BASTARDS.

SEC. 838. Definition of a bastard.
839. Who are liable for its support.
840. When bastard, chargeable to the public, is born or is likely to be born, application to be made to a justice of the peace or police justice.
841. Examination by the magistrate, and warrant against the father.
842. Justice designated as a magistrate, and person proceeded against as defendant.
843. Warrant, when to be served in another county.
844. Magistrate in another county, may take undertaking for support of bastard and mother, or for appearance of defendant at the sessions.
845. On giving undertaking, defendant to be discharged.
846. If undertaking not given, defendant to be taken before magistrate who issued the warrant.
847. Before what magistrate in the same county, defendant is to be taken, when the magistrate issuing the warrant is unable to act.
848. The magistrate to associate with himself, another magistrate and they to examine the matter.
849. Adjournment of examination. Security from defendant.
850. Determination of the case, and order of the magistrates.
851. Defendant to pay the costs, and give undertaking for support of bastard and mother, or for appearance at sessions.
852 On giving undertaking, defendant to be discharged; otherwise, to be committed.
853. Commitment of defendant, during examination.
854. Proceedings by magistrate, when security is given by defendant on arrest out of the county.
855. Examination in such case, and order thereon.
856. Magistrates may compel mother to disclose the father of the bastard. Proceedings, if she refuse.
857. If mother possess property, two magistrates may make an order that she pay for the support of the child.

SEC. 838. If she do not comply, she must be committed, or discharged on undertaking.
839. Magistrates may reduce amount directed to be paid by the father or mother. Court of sessions may reduce or increase it.
840. Proceedings against the father or mother, absconding from their place of residence.

§ 838. Definition of a bastard.—A bastard is a child who is begotten and born,

1. Out of lawful matrimony;

2. While the husband of its mother was separate from her, for a whole year previous to its birth; or,

3. During the separation of its mother from her husband, pursuant to a judgment of a competent court.

Peo. *v.* Overseers of Ontario, 15 Barb., 286.

§ 839. Who are liable for its support.—The father and mother of a bastard are liable for its support. In case of their neglect or inability, it must be supported by the county, city or town in which it is born, as provided by special statutes.

Infancy no defense. Peo. *v.* Moores, 4 Denio, 518. See Peo. *v.* Overseers of Ontario, 15 Barb., 286.

§ 840. Application to inquire into the facts.—If a woman be delivered of a bastard, or be pregnant of a child likely to be born such, and which is chargeable to to a county, city or town, a superintendent of the poor of the county, or an overseer of the poor or other officer of the alms-house of the town or city where the woman is, must apply to a justice of the peace or police justice in the county, to inquire into the facts of the case.

Justice can only act in his county and on proper official application. Sprague *v.* Eccleston, 1 Lans., 74. See Wallsworth *v.* McCullough, 10 Johns., 93; Birdsall *v.* Edgerton, 25 Wend., 619.

§ 841. Examination by the magistrate and warrant against the father.—The magistrate must, by the examination of the woman on oath, and any other testimony which may be offered, ascertain the father of the bastard, and must issue his warrant, directed to a peace officer of the county, commanding him, without delay, to appre-

bend the father and bring him before the justice, for the purpose of having an adjudication as to the filiation of the bastard.

§ 842. Justice designated as a magistrate, and person proceeded against as defendant. — An officer issuing a warrant or making an examination, as provided in this chapter, is designated as a magistrate, and the person against whom the warrant is issued, as the defendant.

§ 843. Warrant, when to be served in another county. —If the defendant reside in another county than that in which the warrant issued, the magistrate must, by an indorsement thereon, direct the sum in which the defendant shall give security, and the officer must deliver the warrant to a justice of the peace or police justice in the city or town in which the defendant resides or is found. The magistrate to whom it is presented, on proof, under oath, of the signature of the magistrate who issued the warrant, must then indorse a direction thereon, that it be served in the county in which he resides, and the defendant may be arrested in that county accordingly. Upon this proof, the magistrate indorsing the warrant is exempted from liability to a civil or criminal action, though it afterward appear that the warrant was illegally or improperly issued.

§ 844. Magistrate in another county, may take undertaking. — When the defendant is arrested in another county, he must be taken before the magistrate who indorsed the warrant, or before another magistrate of the same city or county, who may take from the defendant an undertaking, with sufficient sureties, to the effect:

1. That he will indemnify the county, and town or city, where the bastard was or is likely to be born, and every other county, town or city, against any expense for the support of the bastard, or of its mother during her confinement and recovery, and to pay the costs of arresting the defendant, and of any order of filiation that may be made, or that the sureties will pay the sum indorsed on the warrant; or

2. That the defendant will appear and answer the charge at the next court of sessions of the county where the warrant was issued, and obey its order thereon.

Attorney cannot be surety. Rule 5 Sup. Ct. See Peo. v. Tilton, 13 Wend., 597.

§ 845. **On giving undertaking, defendant to be discharged.**—When either of the undertakings mentioned in the last section is given, the magistrate must discharge the defendant, and must indorse a certificate of the discharge upon the warrant. He must also deliver the warrant, with the undertaking, to the officer, who must return it to the magistrate granting the warrant, by whom the same proceedings must be had, as if he had taken the undertaking.

§ 846. **If undertaking not given.**—If the defendant do not give security, as provided in section 844, the officer must take him before the magistrate who issued the warrant.

§ 847. **When magistrate issuing warrant is unable to act.**—If, however, the magistrate who issued the warrant be absent or unable to act, the defendant must be taken before the nearest or most accessible magistrate in the same county. The officer must, at the same time, deliver to the magistrate, the warrant with his return indorsed and subscribed by him.

§ 848. **Magistrate to associate with himself, another magistrate.**—The magistrate before whom the defendant is brought, as provided in the last two sections, must immediately, associate with himself, another justice of the peace or police justice in the same county or city; and the two magistrates thus associated, must inquire into the charge, and must examine on oath, the woman who is the mother of or pregnant with the bastard in the presence of the defendant, in respect to the charge, and hear any testimony which may be offered in relation thereto.

§ 849. Adjournment of examination. Security from defendant.—The magistrates may, on the application of the defendant, for good cause, adjourn the examination, not exceeding thirty days, upon the defendant giving an undertaking, with two sufficient sureties, to the effect that he will appear before the magistrates at the time appointed, or that the sureties will pay the sum mentioned therein, which must be fixed by the magistrates, and which must be a full indemnity for the expense of supporting the bastard and its mother, as provided in section 851.

Departing without leave, after appearance, forfeits bond. Peo. *v.* Jayne, 27 Barb., 58.

§ 850. Determination of the case, and order of the magistrates.—Upon the hearing, the magistrates must determine who is the father of the bastard, and must proceed as follows:

1. If they determine that the defendant is not the father of the bastard, he must be forthwith discharged;

2. If they determine that he is the father, they must make an order of filiation, specifying therein the sum to be paid weekly or otherwise, by the defendant for the support of the bastard; and if the mother be indigent, the sum to be paid by the defendant for her support, during her confinement and recovery;

3. They must certify the reasonable costs of arresting the defendant, and of the order of filiation;

4. They must reduce their proceedings to writing, and subscribe them.

Sub. 1. Adjudication in favor of defendant is a bar. Thayer *v.* Overseers, etc., 5 Hill, 443. See Peo. ex rel. Dumont *v.* Tompkins, G. Sess., 19 Wend., 154. Sub. 3. See Dunham *v.* Monell, H. & D., 377.

§ 851. Defendant to pay the costs, and give undertaking for support, or for appearance at sessions.—If the defendant be adjudged to be the father, he must immediately pay the amount certified for the costs of the arrest and of the order of filiation, and enter into an undertaking, with sufficient sureties approved by the magistrates, to the effect,

1. That he will pay weekly or otherwise, as may have

been ordered, the sum directed for the support of the child, and of the mother during her confinement and recovery, or which may be ordered by the court of sessions of the county; and that he will indemnify the county, and town or city, where the bastard was or may be born (as the case may be), and every other county, town or city, which may have been or may be put to expense for the support of the bastard, or of its mother during her confinement and recovery, against those expenses, or that the sureties will do so, not exceeding the sum mentioned in the undertaking, and which must be fixed by the magistrates; or,

2. That he will appear at the next court of sessions of the county, to answer the charge and obey its order thereon, or that the sureties will pay a sum equal to a full indemnity for supporting the bastard and its mother, as provided in the first subdivision of section 844.

Sub. 1. See Peo. v. Meighan, 1 Hill, 298. Sub. 2. Peo. v. Greene, 5 Hill, 647; Peo. v. Tilton, 13 Wend., 297. Bond in both conditions void. Hoagland v. Hudson, 8 How. Pr., 343. See Peo. v. Mitchell, 4 Sand., 466.

§ 852. On giving undertaking, defendant to be discharged; otherwise, to be committed.—Upon a compliance with the provisions of the last section, the magistrates must discharge the defendant; but otherwise, they or either of them must, by warrant, commit him to the county jail, or in the city of New York, to the city prison of that city, until he be discharged by the court of sessions of the county, or deliver an undertaking, as prescribed by the last section.

Costs must be paid in addition to giving undertaking. Peo. v. Stowell, 2 Den., 127.

§ 853. Commitment of defendant, during examination.—During the examination, and until the defendant is discharged by the magistrate, he must remain in custody of the officer who arrested him, unless an undertaking have been given for his appearance, as provided in sections 844 and 849; and when committed to prison, he must be actually confined therein.

§ 854. Proceedings when security is given by defendant on arrest out of the county.—When security taken

out of the county, for the appearance of the defendant at the court of sessions, as provided in section 844, is returned to the magistrate who issued the warrant, he must associate with himself another magistrate of the same county, and the magistrates thus associated must proceed as provided in sections 848 to 850, both inclusive.

§ 855. Examination in such case, and order thereon.—The examination may be had, and the order of filiation made, in the absence of the defendant, unless, before the order is made, he require of the magistrate issuing the warrant, that the examination be had in his presence, in which case the examination must be had, as if the defendant had originally appeared.

§ 856. Magistrates may compel mother to disclose the father of the bastard. Proceedings, if she refuse.—In making an examination authorized by this chapter, the magistrate issuing the warrant, or the magistrates making the examination, may compel the mother of a bastard, chargeable to a county, city or town, or a woman pregnant of a child likely to be born such, to disclose the name of the father of the bastard; or if she refuse to do so, may, by a warrant setting forth the cause thereof, at the expiration of one month from her delivery, if sufficiently recovered, commit her to the county jail, or in the city of New York, to the city prison of that city, until she disclose the name of the father.

Mother of bastard who is married, is incompetent to prove husband's non-access. Peo. *v.* Overseers, 15 Barb., 286. Cannot forcibly examine mother to establish pregnancy. Peo. *v.* McCoy, 45 How. Pr., 216.

§ 857. If mother possess property, she may be ordered to support the child.—If the mother of a bastard, chargeable or likely to become chargeable, as provided in section 840, be possessed of property in her own right, any two magistrates of the county or city where she is, on the application of any of the officers mentioned in that section, must examine into the matter, and may make an order charging the mother with the payment of money weekly, or otherwise, for the support of the bastard.

§ 858. If she do not comply, she must be committed, or discharged on undertaking.—If, after service of the order upon the mother, she do not comply therewith, she must be committed to the county jail, or in the city of New York, to the city prison of that city, until she comply, or enter into an undertaking, with sufficient sureties approved by the magistrates, to the effect that she will appear at the next court of sessions of the county, to answer the matters stated in the order, and obey its order thereon, or that the sureties will pay the sum mentioned in the undertaking, and which must be fixed by the magistrates.

§ 859. Magistrates may reduce amount directed to be paid by the father or mother. Court of sessions may reduce or increase it.—The magistrates, who may have made an order against the father or mother of a bastard, as provided in sections 850 and 857, may, from time to time, for good cause, reduce the amount therein directed to be paid, and upon the application of any of the officers mentioned in section 840, the court of sessions of the county, upon ten days' notice to those officers, or to the father and mother of the bastard, may reduce or increase the amount so directed to be paid.

§ 860. Proceedings against absconding father or mother.—If the father or mother of a bastard, or of a child likely to be born such, abscond from their place of residence, leaving the bastard chargeable or likely to become chargeable to the public, a superintendent of the poor of the county, or an overseer of the poor or other officer of the alms-house of the town or city where the bastard was born, or is likely to be born, may apply to any two magistrates of the city or county where any property, real or personal, of the father or mother may be, for authority to take the same. Upon due proof of the facts on oath, to the satisfaction of the magistrates, they must issue their warrant, and proceed thereon, in the manner provided in title VIII, of this part, in relation to persons absconding and leaving their children chargeable to the public.

CHAPTER II.

APPEALS FROM THE ORDERS OF MAGISTRATES, RESPECTING BASTARDS.

SEC. 861. Who may appeal, and in what cases.
862. Appeal, how taken.
863. Papers to be transmitted by magistrates, to court of sessions
864. Court to hear the case. Evidence on hearing.
865. Court may affirm, vacate or modify the order, or adjourn the hearing till the bastard be born
866. If woman be not pregnant, or be married before her delivery, or the child be not born alive, defendant to be discharged.
867. Order of the court, on affirmance.
868. Commitment of defendant, if he fail to give undertaking.
869. Undertaking for appearance on appeal, when forfeited.
870. When mother bound to appear at the sessions, court to proceed as upon an appeal.
871. When the court may make an order against the mother, for the support of the bastard
872. Proceedings against the mother, on affirmance or modification of the order of the magistrates.
873, 874. Costs on appeal, when awarded and how paid.
875. When order of filiation vacated, except on the merits, court may make a new order of filiation, or bind the defendant to appear.
876. If order of filiation be vacated, except on the merits, magistrates may proceed anew.
877. Court to inquire into circumstances of father or mother, committed for not giving undertaking to support the bastard.
878. Father or mother unable to support the bastard, may be discharged.
879. Notice, before discharge, and examination of the matter.
880. Party cannot be discharged, but by the court

§ 861. Who may appeal, and in what cases.— A person deeming himself aggrieved by the order of two magistrates, made pursuant to the last chapter, may appeal therefrom to the next court of sessions of the county; except that a person who has executed an undertaking to obey an order of filiation, and indemnify the public, as provided in section 851, cannot appeal from any other part of the order mentioned in section 850, than that which fixes the weekly or other allowance to be paid.

§ 862. Appeal, how taken.—When the father or mother of the bastard has entered into an undertaking for appearance at the next court of sessions of the county, as provided in sections 851 and 858, it is an appeal from the order of filiation or maintenance; and no other notice thereof is necessary. In any other case, the appeal is taken, by a written notice of at least ten days before the court, to the magistrates who made the order, and to the party affected thereby, or to the officer at whose instance it was obtained.

§ 863. Papers to be transmitted by magistrates, to court of sessions.—The magistrates receiving an undertaking for appearance at the court of sessions, must transmit it to the court, before its opening, with a certified copy of the order appealed from.

§ 864. Court to hear the case. Evidence on hearing.—The court must immediately, or at any other time it may appoint, proceed to hear the allegations and proofs of the parties; and the party in whose favor the order was made, must support it by evidence. If the mother of the bastard be dead or insane, her testimony on the examination before the magistrates is receivable in evidence.

Stowell *v.* Overseers, etc., 5 Denio, 598; Roy *v.* Targee, 7 Wend., 358.

§ 865. Court may affirm, vacate or modify the order or adjourn the hearing till the bastard be born.—The court may affirm or vacate an order of filiation or maintenance, or may reduce or increase the sum ordered to be paid for the support of the bastard or its mother; and, disregarding defects in form in the order, must amend it according to the fact. If, when the appeal is heard, the bastard be not born, the court may adjourn the hearing, until it be born, and in that case, must take an undertaking from the party appealing, for his appearance, in such sum and with such sureties as the court may deem sufficient.

Attorney cannot be surety. Rule 5, Sup. Ct.

§ 866. In what cases defendant to be discharged. — If the woman alleged to be pregnant, be not so, or be married before her delivery, or the child be not born alive, the defendant must be discharged from custody, or from the obligation of his undertaking, either by the court or magistrates, upon that fact being made to appear.

§ 867. Order of the court, on affirmance. — If, upon the hearing of the appeal, the court of sessions affirm an order of filiation or maintenance, it must require the defendant to enter into an undertaking, with sufficient sureties, approved by the court, to the effect that he will pay, weekly or otherwise, according to the order as made by the magistrate* or modified by the court, the sum directed for the support of the bastard, and of the mother during her confinement and recovery; and that he will indemnify the county, and town or city where the bastard was or may be born (as the case may be), and every other county, town or city, which may have been put to expense for the support of the child, or of its mother during her confinement and recovery, against those expenses, or that the sureties will do so, not exceeding the sum mentioned in the undertaking, and which must be fixed by the court.

§ 868. Commitment of defendant, if he fail to give undertaking. — If, on judgment of affirmance, the defendant do not enter into an undertaking, as provided in the last section, he must be committed to the county jail, or in the city of New York, to the city prison of that city, until he do so, or be discharged by the court.

§ 869. Undertaking for appearance on appeal, when forfeited. — The undertaking for the appearance of the defendant, at the court of sessions, upon an appeal, is forfeited, by his neglect to appear, or to give the undertaking mentioned in the last two sections, unless he be discharged by the court.

Departing without leave after appearance forfeits bond. Peo. *v.* Jayne, 27 Barb., 58.

* So in the original.

§ 870. When mother bound to appear at the sessions, court to proceed as upon an appeal.— When the mother of a bastard is bound to appear at the court of sessions, or is committed as provided in section 858, the court must proceed in respect to the matter, in the same manner as upon an appeal.

§ 871. When the court may make an order against the mother, for the support of the bastard. — If the court be satisfied that the mother has property in her own right, sufficient to enable her to support the bastard or contribute to its support, it must confirm the order mentioned in section 857, or may vary the sum ordered to be paid weekly or otherwise; or if not, it must discharge her from custody or from the obligation of her undertaking.

§ 872. Proceedings against the mother, on affirmance or modification of such order. — If the court affirm or modify the order, as provided in the last section, it must require the defendant to enter into an undertaking, with sufficient sureties approved by the court, to the effect that she will pay, weekly or otherwise, according to the order, as made by the magistrates or modified by the court, the sum directed for the support of the bastard, or that the sureties will do so, not exceeding the sum mentioned in the undertaking, and which must be fixed by the court. If the undertaking be not given she must be committed in the manner provided in section 868.

§ 873. Costs on appeal, when awarded and how paid. — The court must award costs to the party in whose favor an appeal is determined. When awarded against county superintendents or overseers of the poor of a town, not liable for the support of its own poor, they must be paid by the county treasurer, on delivering to him a certified copy of the order and of the taxed costs, and must be charged by him to the town in the same county, liable to support the bastard, or if there be none, to the county. In the city of New York, when costs are awarded upon an appeal, to the person charged

as the father or mother of the bastard, they must, upon the production of similar vouchers, be paid by the comptroller of that city, and charged to the appropriation made to the commissioners of charities and corrections thereof.

§ 874. Id. — In other cases, the payment of the costs may be enforced by the court, as in a civil action. If the party against whom they are awarded, reside out of the jurisdiction of the court, an action may be brought on the order, by the party entitled to the costs, in which the production of a certified copy of the order and of the taxed costs, is conclusive evidence.

§ 875. When court may make a new order of filiation, or bind the defendant to appear. — If the court vacate an order of filiation, for any other cause than upon the merits, it must proceed, and may make an original order of filiation, in the manner prescribed in the second subdivision of section 850, or bind the person charged, in an undertaking, in a sum and with sureties approved by the court, to appear at the next court of sessions.

§ 876. If order of filiation be vacated, except on the merits, magistrates may proceed anew. — If the order be vacated for any other cause than on the merits, and the person charged be bound as provided in the last section, the same proceedings may be had by the magistrate, for the apprehension of the defendant, and for making an order of filiation, and for the commitment of the defendant for not giving an undertaking, as are authorized in the first instance. And the same proceedings must be subsequently had, in all respects.

§ 877. Court to inquire into circumstances of father or mother, committed for not giving undertaking. — When a person is committed to prison, charged as the father of a bastard, or of a child likely to be born a bastard, and when the mother of a bastard is so com-

mitted, for not giving an undertaking to support the bastard, or to indemnify the public, the court must inquire, from time to time, into the circumstances and ability of the father or mother, to support the bastard and to procure security therefor.

§ 878. Father or mother unable to support the bastard, may be discharged. — If the court be at any time satisfied that the father or mother is wholly unable to support the bastard, or to contribute to its support, or to procure security therefor, it may, in its discretion, order the father or mother to be discharged from imprisonment.

§ 879. Notice before discharge. — Before granting the order, the court must be satisfied that reasonable notice has been given to the overseers of the poor, or to the county superintendents, or chief officers of the almshouse, at whose instance the party was committed, of the intention to apply for a discharge, and must hear the allegations and proofs of the superintendents, overseers or officers, and may examine the party applying on oath respecting the subject of the application.

§ 880. Party cannot be discharged, but by the court. — A person committed, as provided in section 877, cannot be discharged from imprisonment, except by the court of sessions of the county.

CHAPTER III.

ENFORCEMENT OF THE UNDERTAKING FOR THE SUPPORT OF THE BASTARD OR ITS MOTHER, OR FOR APPEARANCE ON APPEAL.

SEC. 881. Court to order prosecution of undertaking, when forfeited. By whom prosecuted.
882. In whose name undertaking to be prosecuted.
883. Evidence in the action, and measure of damages.
884. For a subsequent breach of the undertaking, new action may be brought.
885. Costs, how recovered, when awarded against the plaintiff.
886. Action may be maintained on the order of the magistrates or court.

§ 881. Court to order prosecution of undertaking, when forfeited. By whom prosecuted. — If an under-

taking for the appearance at the court of sessions, of a person charged as the father or mother of a bastard, be forfeited, the court may order it to be prosecuted; and the sum mentioned therein may be recovered, and when collected, must, except in the city of New York, be paid to the county treasurer, and by him credited to the town in the same county, liable to the support of the bastard, or if there be none, to the county. In the city of New York, the court must order the undertaking to be prosecuted by the commissioners of charities and corrections, and when collected, it must be paid into the city treasury. In every other county, it must be prosecuted by the district attorney.

§ 882. In whose name undertaking to be prosecuted. — When an undertaking to obey an order, in relation to the support of a bastard, or of a child likely to be born a bastard, or of its mother, is forfeited, it may be prosecuted in the name of the county superintendents of the county, or the overseers of the poor of the town, which was liable for the support of the bastard, or which may have incurred any expense in the support of the bastard, or of its mother, during her confinement and recovery; or in the city of New York, in the name of the corporation of that city.

Order of filiation conclusive, unless appealed from. Wallsworth *v.* Mead, 9 Johns., 367; Peo. *v.* Relyea, Ib., 195; Rockfeller *v.* Donnelly, 8 Cow., 623.

§ 883. Evidence in the action, and measure of damages. — In the action mentioned in the last section, it is not necessary to prove the actual payment of money by a county superintendent, overseer of the poor, officer of an alms-house, or other person; but the neglect to pay a sum ordered to be paid by competent authority, for the support of the bastard, or of its mother, is a breach of the undertaking, and the measure of the damages is the sum ordered to be paid, and which was withheld at the time of the commencement of the action, with interest thereon.

Peo. *v.* Corbett, 8 Wend., 520; Rockfeller *v.* Donnelly, 8 Cow., 623. Money may be recovered back if mother not pregnant. Wheel *v.* Hicks, 25 N. Y., 289.

§ 884. When new action may be brought. — For a breach of the undertaking, after the recovery of damages or the commencement of an action, another action may, in the same manner, be brought. The money collected upon the undertaking must be paid, and credited, in the manner provided in section 881.

§ 885. Costs, how recovered, when awarded against the plaintiff. — If, in the action, costs be awarded against the plaintiffs, they may be recovered, as follows:

1. If against the corporation of the city of New York, in the same manner as in any other action;

2. If against county superintendents or overseers of the poor, they must, upon the delivery of a transcript of the judgment, be paid by the county treasurer, and by him charged to the town in the same county, liable for the support of the bastard, or if there be none, to the county.

Taxable costs are to be allowed. Ontario Co. *v.* Moore, 12 Wend., 273.

§ 886. Action may be maintained on the order.—An action may be maintained by the parties authorized by section 882, upon an order made by two magistrates, or by a court of sessions, for the payment of a sum weekly or otherwise, for the support of the bastard or its mother, notwithstanding an undertaking may have been given to comply with the order; and in case of the death of the person against whom the order was made, an action may be maintained thereon against his executors or administrators. But when an undertaking is given to appear at the next court of sessions, no action can be brought on the order until it is affirmed by the court.

TITLE VI.

Of Proceedings respecting Vagrants.

SEC. 887. Who are vagrants.
888. Proceedings before magistrate.
889. Child, how kept.
890. Peace officers, when required by any person, to carry vagrant before a magistrate for examination.
891. Vagrant, when to be convicted. Form of certificate of conviction.
892. Certificate to constitute record of conviction, and to be filed. Commitment of vagrant.
893. Children begging, how disposed of.
894. Peace officers to arrest and pursue a person disguised, and take him before a magistrate.
895. Private citizen may do so, without warrant.
896. Peace officer may require aid. Duty of persons required to aid him.
897. Neglect or refusal to aid peace officer, without lawful cause, a misdemeanor. Punishment.
898. Magistrate may depute an elector of the county to make arrest of person disguised. If his name be not known, fictitious name may be used.

§ 887. Who are vagrants.—The following persons are vagrants:

1. A person who, not having visible means to maintain himself, lives without employment;

2. A person who, being an habitual drunkard, abandons, neglects, or refuses to aid in the support of his family;

3. A person who has contracted an infectious or other disease, in the practice of drunkenness or debauchery, requiring charitable aid to restore him to health;

4. A common prostitute, who has no lawful employment, whereby to maintain herself;

5. A person wandering abroad and begging, or who goes about from door to door, or places himself in the streets, highways, passages, or other public places, to beg or receive alms;

6. A person wandering abroad and lodging in taverns, groceries, ale-houses, watch or station-houses, out-houses, market places, sheds, stables, barns or uninhabited buildings, or in the open air, and not giving a good account of himself;

7. A person, who, having his face painted, discolored,

covered or concealed, or being otherwise disguised, in a manner calculated to prevent his being identified, appears in a road or public highway, or in a field, lot, wood or inclosure.

8. Any child between the age of five and fourteen, having sufficient bodily health and mental capacity to attend the public schools, found wandering in the streets or lanes of any city or incorporated village, a truant, without any lawful occupation.

Sub. 4. Matter of Forbes, 19 How. Pr., 457.

§ 888. Proceedings before magistrate.—When complaint is made to any magistrate by any citizen or peace officer against any vagrant under subdivision 8 of the last section, such magistrate must cause a peace officer to bring such child before him for examination, and shall also cause the parent, guardian or master of such child, if the child has any, to be summoned to attend such examination.

If, thereon, the complaint shall be satisfactorily established, the magistrate must require the parent, guardian or master to enter into an engagement in writing to the corporate authorities of the city or village, that he will restrain such child from so wandering about, will keep him in his own premises or in some lawful occupation, and will cause him to be sent to some school, at least four months in each year, until he become fourteen years old.

The magistrate may, in his discretion, require security for the faithful performance of such engagement.

If the child has no parent, guardian or master, or none can be found, or if the parent, guardian or master refuse or neglect, within a reasonable time, to enter into such engagement, and to give such security if required, the magistrate shall by warrant commit the child to such place as shall be provided for his reception. If no such place for his reception has been provided, he shall commit him to the alms-house of the county.

§ 889. Child how kept.—Every child received pursuant to the last section, shall be kept until discharged by the overseers of the poor or the commissioners of the

alms-house of the city or village, and may be bound out as an apprentice by them, or either of them, with the consent of any magistrate, or any of the aldermen of the city, or any trustee of an incorporated village where he may be, in the same manner, for the same periods and subject to the same provisions in all respects as directed in respect to parents whose children have become chargeable on any town.

§ 890. Peace officers, when to arrest.—A peace officer must, when required by any person, take a vagrant before a justice of the peace or police justice of the same city, village or town, or before the mayor, recorder, or city judge, or judge of the general sessions of the same city, for the purpose of examination.

See Peo. ex rel. Kingsley *v.* Pratt, 22 Hun, 300.

§ 891 Vagrant, when to be convicted. Form of certificate of conviction.—If the magistrate be satisfied, from the confession of the person so brought before him, or by competent testimony, that he is a vagrant, he must convict him, and must make and sign, with his name of office, a certificate in substantially the following form:

"I certify that A. B., having been brought before me, charged with being a vagrant, I have duly examined the charge, and that upon his own confession in my presence, [or 'upon the testimony of C. D.,' etc., naming the witnesses], by which it appears that he is a person [pursuing the description contained in the subdivision of section 887, which is appropriate to the case], I have adjuged that he is a vagrant.

"Dated at the *town* [or city] of , the day of , 18 .

"E. F.,
"Justice of the peace of the town of ," [or as the case may be.]

What is a confession. Brown *v.* Peo., 4 Barb., 164.

§ 892. Certificate to be filed. Commitment of vagrants.—The magistrate must immediately cause the

certificate, which constitutes the record of conviction, to be filed in the office of the clerk of the county, and must by a warrant, signed by him with his name of office, commit the vagrant, if not a notorious offender, and a proper object for such relief, to the county poor-house if there be one, or to the alms-house or poor-house of the city, village or town, for not exceeding six months, at hard labor, or if the vagrant be an improper person to be so committed, he must be committed for a like term, to the county jail, or in the city of New York, to the city prison or penitentiary of said city, or in the county of Kings to the penitentiary of that county.

In re John Wacher, 62 How. P. R., 352; Peo. v. Coffee, 62 id., 445.

§ 893. Children begging, how disposed of.—If a child be found begging for alms, or soliciting charity from door to door, or in a street, highway, or public place in a city, village or town, a justice of the peace or police justice, on complaint and proof thereof, must commit the child to the county poor-house or other place provided for the support of the poor, to be kept, employed and instructed in useful labor, until discharged by the county superintendents of the poor, or in the city of New York, by the commissioners of charities and corrections, or bound out as an apprentice by them, as prescribed by special statutes.

§ 894. Peace officers to arrest and pursue a person disguised.—It is the duty of every peace officer of the county, city, village or town, where a person described in the seventh subdivision of section 887 is found, to arrest and take him before a magistrate mentioned in section 888, to be proceeded against as a vagrant.

§ 895. Private citizen may do so without warrant.—A private citizen of the county may also, without warrant, exercise the powers conferred upon a peace officer by the last section.

§ 896. Peace officer may require aid.—In the execution of the duties imposed by section 894, the peace officer may command the aid of as many male inhabitants

of his county, city, village or town, as he may think proper; and a citizen so commanded, may provide himself or be provided, with such means and weapons as the officer giving the command may designate.

§ 897. Neglect to aid peace officer a misdemeanor. Punishment.— A person commanded to aid the officer, as prescribed in the last section, and who without lawful cause refuses or neglects to do so, is guilty of a misdemeanor, and is punishable by a fine not exceeding two hundred and fifty dollars, or by imprisonment not exceeding one year, or both.

§ 898. Magistrate may depute an elector of the county to make arrest. If his name be not known, fictitious name may be used.— A magistrate to whom complaint is made against a person charged as a vagrant, as described in the seventh subdivision of section 887, may, by a warrant, signed by him with his name of office, depute an elector of the county to arrest and bring the vagrant before him, to answer the complaint; and if the name of the person complained of be not known, he may be described in the warrant and in all subsequent proceedings thereon, by a fictitious name.

TITLE VII.

Of Proceedings Respecting Disorderly Persons.

SEC. 899. Who are disorderly persons.
900. On complaint, warrant to be issued.
901. On confession or proof that he is a disorderly person, security to be required.
902. If security given, defendant to be discharged. If not, to be convicted. Form of certificate.
903. Certificate, to constitute record of conviction, and to be filed. Commitment thereon.
904. Undertaking, when forfeited.
905. How prosecuted, and proceeds how applied.
906. When new security may be required, or defendant committed after recovery on undertaking.

SEC. 907. Defendant committed for not giving security, how discharged.
908. Keeper of prison, to return list of disorderly persons committed to court of sessions.
909. Examination of the case by the court.
910. Court may discharge, or authorize the binding out of disorderly person.
911. Court may also commit him to prison. Nature and duration of imprisonment.
912. Order to procure materials and implements, and to compel him to work.
913. Expense of materials or implements, how paid for, and proceeds of labor, how disposed of.

§ 899. Who are disorderly persons.— The following are disorderly persons:

1. Persons who actually abandon their wives or children, without adequate support, or leave them in danger of becoming a burden upon the public, or who neglect to provide for them according to their means;

2. Persons who threaten to run away, and leave their wives or children a burden upon the public;

3. Persons pretending to tell fortunes, or where lost or stolen goods may be found;

4. Keepers of bawdy houses or houses for the resort of prostitutes, drunkards, tipplers, gamesters, habitual criminals, or other disorderly persons;

5. Persons who have no visible profession or calling, by which to maintain themselves, but who do so, for the most part, by gaming;

6. Jugglers, common showmen and mountebanks, who exhibit or perform for profit puppet shows, wire or rope dancers, or other idle shows, acts or feats;

7. Persons who keep, in a public highway or place, an apparatus or device for the purpose of gaming, or who go about exhibiting tricks or gaming, therewith;

8. Persons who play, in a public highway or place, with cards, dice or any other apparatus or device for gaming;

9. Habitual criminals within the provisions of this Code.

§ 900. On complaint, warrant to be issued.— Upon complaint on oath, to a justice of the peace or police justice of a city, village or town, or to the mayor, recorder, city judge or judge of the general sessions of a city, against a person, as being disorderly, the magis-

trate must issue a warrant, signed by him, with his name of office, requiring a peace officer to arrest the defendant, and bring him before the magistrate for examination.

§ 901. On confession or proof that he is a disorderly person, security to be required.— If the magistrate be satisfied, from the confession of the defendant, or by competent testimony, that he is a disorderly person, he may require that the person charged give security, by a written undertaking, with one or more sureties approved by the magistrate, to the following effect:

1. If he be a person described in the first or second subdivision of section 899, that he will support his wife and children, and will indemnify the county, city, village or town, against their becoming, within one year, chargeable upon the public;

2. In all other cases, that he will be of good behavior for the space of one year;

Or that the sureties will pay the sum mentioned in the undertaking, and which must be fixed by the magistrate.

Not entitled to jury trial. Duffy *v.* Peo., 1 Hill, 355, id.; 6 id., 75. See Bennac *v.* Peo., 4 Barb., 164; 23 Wend., 48.

§ 902. If security given, defendant to be discharged. If not, to be convicted. Form of certificate. — If the undertaking be given, the defendant must be discharged. But if not, the magistrate must convict him as a disorderly person, and must make and sign with his name of office, a certificate in substantially the following form:

"I certify, that A. B., having been brought before me charged with being a disorderly person, I have duly examined the charge, and that upon his own confession in my presence, [or 'upon the testimony of C. D.,' etc., naming the witnesses], by which it appears that he is a [pursuing the description contained in the subdivision of section 899, which is appropriate to the case], I have adjudged that he is a disorderly person.

"Dated at the *town* [or 'city'] of ———, the day of , 18 .

"E. F.,
Justice of the peace of the town of ," [or as the case may be].

§ 903. Certificate, to constitute record of conviction, and to be filed. Commitment thereon. — The magistrate must immediately cause the certificate, which constitutes the record of conviction, to be filed in the office of the clerk of the county, and must, by a warrant signed by him, with his name of office, commit the defendant to the county jail, or in the city of New York to the city prison or penitentiary of that city, or in the county of Kings to the penitentiary of that county, for not exceeding six months at hard labor, or until he give the security prescribed in section 901.

In re John Wacher, 62 How. P. R., 352; Peo. *v.* Coffee, id., 445. Form. 2 Edm. S. C., 381.

§ 904. Undertaking, when forfeited. — The undertaking mentioned in section 901 is forfeited, by the commission of any of the acts which constitute the person by whom it was given a disorderly person, and in the case of a person described in the seventh and eighth subdivisions of section 899, by his playing or betting, at one time or sitting, for money or property exceeding the value of two dollars and fifty cents.

§ 905. How prosecuted, and proceeds how applied. — When an undertaking is forfeited, it may be prosecuted in the name of the county superintendents of the poor, or the overseers of the poor of the town, or in the city of New York, in the name of the corporation of that city, and the sum collected in the action must be paid into the county or city treasury, as the case may be, for the benefit of the poor.

It is no defense to the action that there has been no expense incurred. Peo. *v.* Petit, 3 Hun, 416.

§ 906. When new security may be required, or defendant committed.—Upon a recovery on the undertaking, the court in which it is had may require from the defendant new security, in the manner provided in section 901, or if he fail to give it, may commit him in the manner provided in section 903.

§ 907. Defendant how discharged.—A person committed as a disorderly person, on failure to give security, may be discharged by any two justices of the peace or

police justices, *or the county judge of the county*, upon giving security, as originally required, pursuant to section 901. [Am'd ch. 394 of 1884.]

§ 908. Keeper of prison, to return list of disorderly persons. — The keeper of every prison to which disorderly persons may be committed, must return to the court of sessions of the county, on the first day of each term, a list of the persons so committed and then in his custody, with the nature of the offense of each, the name of the magistrate by whom he was committed, and the term of his imprisonment.

§ 909. Examination of the case by the court. — The court of sessions must thereupon inquire into the circumstances of each case, and hear any proof that may be offered, and must examine the record of conviction, which is evidence of the facts contained in it, until disproved.

§ 910. Court may discharge, or authorize the binding out of disorderly person.—The court may discharge a person so committed from imprisonment, either absolutely or upon his giving security as provided in section 901, or if he be a minor, may authorize the county superintendents of the poor, or the overseers of the poor of the town, or in the city of New York, commissioners of charities and corrections, to bind him out in some lawful calling as a servant, apprentice, mariner or otherwise, until he be of age; or if he be of age, to contract for his service with any person, as a laborer, servant, apprentice, mariner or otherwise, for not exceeding one year. The binding out or contract, pursuant to this section, has the same effect as the indenture of an apprentice, with his own consent and that of his parents, and subjects the person bound out or contracted, to the same control of his master and of the court of sessions of the county, as if he were bound as an apprentice.

§ 911. Court may also commit him to prison. Nature and duration of imprisonment. — The court may also, in its discretion, order a person convicted as a

disorderly person, to be kept in the county jail, or, in the city of New York, in the city prison or penitentiary of that city, for a term not exceeding six months at hard labor.

§ 912. **Order to procure materials and implements, and to compel him to work.** — If there be no means provided in the prison, for employing the offender at hard labor, the court may direct the keeper to furnish him such employment as it may specify, and for that purpose, to purchase materials and implements, not exceeding a prescribed value, and to compel the offender to perform the work allotted to him. The expenses incurred in carrying the order into effect, must be paid to the keeper by the county treasurer, upon the delivery to him of the order of the court, and an account under the oath of the keeper, of the materials and implements furnished.

§ 913. **Expense, how paid for.**—The keeper must sell the produce of the labor of the offender, and must account for the cost of the materials or implements purchased, and for one-half of the surplus, to the board of supervisors, and pay it into the county treasury, and pay the other half of the surplus to the person by whom it was earned on his discharge from imprisonment. He must also account to the court, when required, for the materials or implements purchased, and for the disposition of the proceeds of the labor of the offender.

TITLE VIII.

Of Proceedings Respecting the Support of Poor Persons.

SEC. 914. Who may be compelled to support poor relatives.
915. Order to compel a person to support a poor relative, by whom and how applied for, to court of sessions.
916. Court to hear the case, and make order of support.
917. Support, when to be apportioned among different relatives.
918. Order, to prescribe time during which support is to continue, or may be indefinite. When and how order may be varied.

SEC. 919. Costs, by whom to be paid, and how enforced.
920. Action on the order, on failure to comply therewith.
921. Parents leaving their children chargeable to the public, how proceeded against.
922. Seizure of their property. Transfer thereof, when void.
923. Warrant and seizure, when confirmed or discharged. Direction of the court thereon.
924. Warrant, in what cases to be discharged.
925. Sale of the property seized, and application of its proceeds.
926. Powers of superintendents of poor.

§ 914. Who may be compelled to support poor relatives.—The father, mother and children, of sufficient ability, of a poor person who is insane, blind, old, lame, impotent or decrepid, so as to be unable by work to maintain himself, must at their own charge, relieve and maintain him in a manner to be approved by the overseers of the town where he is, or in the city of New York, by the commissioners of charities and corrections.

A grand-child is liable to support grand-parents. *Ex parte* Hunt, 5 Cow., 234. Husband not bound to maintain wife's bastard children born before marriage. Minden *v.* Cox, 7 Cow., 235. Who are paupers. Norton *v.* Rhodes, 18 Barb., 100.

§ 915. Order to compel a person to support a poor relative. How applied for.—If a relative of a poor person fail to relieve and maintain him, as provided in the last section, the overseers of the poor of the town where he is, or in the city of New York, the commissioners of charities and corrections may apply to the court of sessions of the county where the relative dwells, for an order to compel such relief, upon at least ten days' written notice, served personally, or by leaving it at the last place of residence of the person to whom it is directed, in case of his absence, with a person of suitable age and discretion.

Necessity of a previous order, before applying to court, *Quære.* Anon., 3 N. Y. Leg. Obs., 354.

§ 916. Court to hear the case, and make order of support.—At the time appointed in the notice, the court must proceed summarily to hear the allegations and proofs of the parties, and must order such of the rela-

tives of the poor person, mentioned in section 914, as were served with the notice and are of sufficient ability, to relieve and maintain him, specifying in the order the sum to be paid weekly for his support, and requiring it to be paid by the father, or if there be none, or if he be not of sufficient ability, then by the children, or if there be none, or if they be not of sufficient ability, then by the mother.

§ 917. Support, when to be apportioned. — If it appear that any such relative is unable wholly to maintain the poor person, but is able to contribute toward his support, the court may direct two or more relatives, of different degrees, to maintain him, prescribing the proportion which each must contribute for that purpose; and if it appear that the relatives are not of sufficient ability wholly to maintain him, but are able to contribute something, the court must direct the sum, in proportion to their ability, which they shall pay weekly for that purpose.

See Stone *v.* Burgess, 2 Lans., 439; 47 N. Y., 521.

§ 918. Order may or may not prescribe time during which support is to continue. When and how it may be varied. — The order may specify the time during which the relatives must maintain the poor person, or during which any of the sums directed by the court are to be paid, or it may be indefinite, or until the further order of the court. The court may from time to time vary the order, as circumstances may require, on the application either of any relative affected by it, or of an officer on whose application the order was made, upon ten days' written notice.

§ 919. Costs, by whom to be paid, and how enforced. — The costs and expenses of the application must be ascertained by the court, and paid by the relatives against whom the order is made; and the payment thereof, and obedience to the order of maintenance, and to any order for the payment of money, may be enforced by attachment.

§ 920 Action on the order on failure to comply therewith. — If a relative, required by an order of the court, to relieve or maintain a poor person, neglect to do so in the manner approved by the officers mentioned in section 914, and neglect to pay to them weekly the sum prescribed by the court, the officers may maintain an action against the relative, and recover therein the sum prescribed by the court, for every week the order has been disobeyed, to the time of the recovery, with costs, for the use of the poor. In the city of New York, the action must be in the name of the corporation of that city.

What is a breach of the order. Converse *v.* McArthur, 17 Barb., 410.

§ 921. Parents leaving their children chargeable to the public, how proceeded against. —When the father, or the mother being a widow or living separate from her husband, absconds from the children, or a husband from his wife, leaving any of them chargeable or likely to become chargeable upon the public, the officers mentioned in section 914 may apply to any two justices of the peace or police justices in the county in which any real or personal property of the father, mother or husband is situated, for a warrant to seize the same. Upon due proof of the facts, the magistrate must issue his warrant, authorizing the officers so applying to take and seize the property of the person so absconding.

Downing *v.* Rugar, 21 Wend., 178.

§ 922. Seizure of their property. Transfer thereof, when void. — The officers so applying may seize and take the property, wherever it may be found in the same county; and are vested with all the right and title thereto, which the person absconding then had. The sale or transfer of any personal property, left in the county from which he absconded, made after the issuing of the warrant, whether in payment of an antecedent debt or for a new consideration, is absolutely void. The officers must immediately make an inventory of the property seized by them, and return it, together with their proceedings, to the next court of sessions of the county where they reside, there to be filed.

§ 923. Warrant and seizure, when confirmed or discharged, etc.—The court, upon inquiring into the circumstances of the case, may confirm or discharge the warrant and seizure; and if it be confirmed, must, from time to time, direct what part of the personal property must be sold, and how much of the proceeds of the sale, and of the rents and profits of the real property, if any, are to be applied toward the maintenance of the children or wife of the person absconding.

Court to inquire into the merits. Peo. *v.* Overseers, etc., 23 Barb., 236.

§ 924. Warrant, in what cases to be discharged.—If the party against whom the warrant issued, return and support the wife or children so abandoned, or give security satisfactory to any two justices of the peace, or police justices in the city, village or town, to the overseers of the poor of the town, or in the city of New York, to the commissioners of charities and corrections, that the wife or children so abandoned shall not be chargeable to the town or county, then the warrant must be discharged by an order of the magistrates, and the property taken by virtue thereof restored to the party.

§ 925. Sale of the property seized, and application of its proceeds.—The officers must sell at public auction the property ordered to be sold, and receive the rents and profits of the real property of the person absconding, and in those cities, villages or towns which are required to support their own poor, the officers charged therewith must apply the same to the support of the wife or children so abandoned; and for that purpose must draw on the county treasurer, or in the city of New York, upon the comptroller, for the proceeds as directed by special statutes. They must also account to the court of sessions of the county, for all money so received by them, and for the application thereof, from time to time, and may be compelled by that court to render that account at any time.

§ 926. Powers of superintendents of poor.—In those counties where all the poor are a charge upon the

county, the superintendents of the poor are vested with the same powers, as are given by this title to the overseers of the poor of a town, in respect to compelling relatives to maintain poor persons, and in respect to the seizure of the property of a parent absconding and abandoning his family; and are entitled to the same remedies in their names, and must perform the duties required by this title, of overseers, and are subject to the same obligations and control.

TITLE IX.

Of Proceedings respecting Masters, Apprentices and Servants.

SEC. 927. Complaint against apprentice or servant, for absenting himself, or refusing to serve, or for a misdemeanor or ill behavior.
928. Warrant, when complaint is made in the absence of the defendant.
929. Warrant, by whom and how executed.
930. Hearing the complaint, and committing or discharging the defendant.
931. Complaint against the master, for cruelty, misusage or violation of duty.
932. Hearing the complaint and dismissing it or discharging the apprentice or servant.
933. Preceding sections, not applicable to apprentice with whom money is received or agreed for.
934. Complaint against master in such case, and direction thereon.
935. If complaint not compromised, the master to be held to appear at sessions.
936. Proceedings thereon and order of the court.
937. Complaint by master against clerk or apprentice, where money is paid or agreed for. Clerk or apprentice, when held to appear at sessions.
938. Proceedings thereon, and order of the court.
939, 940. Indenture or contract of service, how assigned on death of master.

§ 927. Complaint against apprentice or servant.— If an apprentice or servant, lawfully bound to service as prescribed by special statutes, willfully absent himself therefrom, without the leave of his master, or refuse to serve according to his duty, or be guilty of any misdemeanor or ill behavior, his master may make complaint of the facts under oath, before a justice of

the peace or police justice in the county, or before the mayor, recorder or city judge of the city where he resides.

§ 928. Warrant, when complaint is made in the absence of the defendant.—If the complaint be made in the absence of the defendant, and the facts be proved to the satisfaction of the magistrate, he must issue a warrant, signed by him, with his name of office, to a peace officer of the county or city, commanding him to arrest the defendant and bring him before the magistrate forthwith, or at a specified time and place, to answer the complaint.

§ 929. Warrant, by whom and how executed.—The peace officer must accordingly execute the warrant, by arresting the defendant and taking him before the magistrate.

§ 930. Hearing and decision.— The magistrate must immediately, or at a time to which he may, for good cause, adjourn the matter, proceed to hear the allegations and proofs of the parties, and if the complaint appear to be well founded, must commit the defendant to the county jail, or in the city of New York, to the city prison of that city, for not exceeding one month, at hard labor, where he must be confined in a room with no other person; or may, by a certificate, signed by him with his name of office, discharge the defendant from the service of his master, and the master from all obligations to the defendant.

§ 931. Complaints against the master.— If a master be guilty of cruelty, misusage, refusal of necessary provisions or clothing, or any other violation of duty toward his apprentice or servant, as prescribed by special statutes, or by the indenture or contract of service, the apprentice or servant may make complaint on oath, to any of the magistrates mentioned in section 927, who must summon the defendant before him, at a specified time and place.

§ 932. Id.; Hearing and decision.— The magistrate must immediately or at a time to which he may, for good cause, adjourn the matter, proceed to hear the allegations and proofs of the parties, and if the complaint be well founded, must, by a certificate under his hands, with his name of office, discharge the apprentice or servant from the service of his master; or if not, he must, by a similar certificate, dismiss the complaint.

§ 933. Preceding sections when not applicable.— The preceding sections of this title do not extend to an apprentice, whose master has received, or is entitled to receive, a sum of money with him, as a compensation for his instruction.

§ 934. Complaint against master in such cases.— Where money is paid or agreed to be paid, on binding out a clerk or apprentice, he may make the complaint mentioned in section 931, and the magistrate to whom it is made must examine it, as provided in section 932, and on such examination, may make such order and direction between the parties, as the justice of the case may require.

§ 935. If complaint not compromised, the master be held for sessions.—If, in the case mentioned in the last section, the complaint cannot be compromised, the magistrate must take a written undertaking from the master, for his appearance at the next court of sessions of the county, in a sum, and with sureties approved by him.

§ 936. Proceedings thereon, and order of the court. —Upon hearing the parties, the court may, by an order entered upon the minutes, direct that the clerk or apprentice be discharged from service, and that the money paid or agreed for in binding him out, be refunded, if paid, to the person who advanced it, or his personal representatives, or if not paid, that it be discharged, and that any security given therefor be delivered up or cancelled.

§ 937. Complaint by master against clerk or apprentice, where money is paid or agreed for. Clerk or apprentice when held to appear at sessions.— The master of a clerk or apprentice, where money is paid or agreed for on binding him out, may make the complaint mentioned in section 927, and the magistrate to whom it is made must proceed thereupon, as provided in sections 928 to 930, both inclusive, and may discharge the complaint, or if in his opinion it be well founded, may take a written undertaking, in a sum and with sureties to be approved by him, for the appearance of the clerk or apprentice at the next court of sessions of the county.

§ 938. Proceedings thereon, and order of the court. —Upon hearing the parties, the court may proceed as provided in section 936, and may punish the clerk or apprentice, by fine or imprisonment, or both, as for a misdemeanor.

§ 939. Indenture or contract of service, how assigned on death of master.—Upon the death of a master to whom a person has been bound to service, as clerk, apprentice or servant, by the county superintendents of the poor, or by the overseers of the poor, or in the city of New York, by the commissioners of charities and corrections, the personal representatives of the master may, with the written consent of the clerk, apprentice or servant, acknowledged before a justice of the peace or police justice, assign the indenture or contract of service to another, who thereby becomes vested with all the rights of the master.

§ 940. Id.— If, in the case mentioned in the last section, the written consent of the clerk, apprentice or servant be refused, the assignment may be made with the same effect, under an order of the court of sessions of the county, upon fourteen days' notice of the application therefor, to the apprentice, or to his parent or guardian, if there be any in the county.

TITLE X.

Of Criminal Statistics.

SEC. 941. District attorney to furnish statement.
942. Duty of clerk.
943. Same.
944. Same.
945. Sheriff's report.
946. Same.
947. Form of report.
948. Consequence of neglect.
949. Duty of secretary of state.

§ 941. District attorney to furnish statement.—Within ten days after the adjournment of any criminal court of record in this state, the district attorney of the county in which the court shall be held, must furnish to the clerk of the court such a description of the offense committed by every person convicted of crime, abridged from the indictment, as would be sufficient to maintain the averments relating to such offense, or necessary to be made in an indictment for a second offense.

§ 942. Duty of clerk.—Within twenty days after the adjournment of any criminal court of record, the clerk thereof must transmit to the office of the secretary of state such statement furnished by the district attorney, of all convictions had at such court.

§ 943. Id.—Within twenty days after the adjournment of any criminal court of record, the clerk thereof must also transmit to the office of the secretary of state a duly certified statement of the number of indictments tried at such court, specifying the number for each separate offense, the number on which convictions were had, and on which defendants were acquitted, and of indictments against persons who were convicted on confession, and against persons who were discharged without trial.

§ 944. Id.—On or before the fifth day of every month, the clerk of each county must transmit to the secretary

of state copies of all certificates of convictions made by any court of special sessions, and required by law to be filed with such clerk, and which have been filed in the office of the county clerk during the previous month.

§ 945. Sheriff's report. — A report must be made by the sheriff of every county in which there is a city, on the first day of every month to the secretary of state, of the number of persons convicted in city courts, courts of special sessions, and police courts during the preceding month. Such reports must specify the crimes, the whole number convicted, the sex, age, nativity, and whether married or single; the degree of education, religious instruction, whether parents living or dead, temperate or intemperate, and whether before convicted or not of any crime.

§ 946. Id. — Within twenty days after the adjournment of any criminal court of record, the sheriff of the county in which such court shall be held, must report to the secretary of state, the name, occupation, age, sex, and native country of every person convicted at such court of any offense, and the degree of instruction which each person so convicted has received, and also such other items of information in relation to such convicts and their offenses, as the secretary of state shall require.

§ 947. Form of report.—The report required by this title must be made in the form prescribed by the secretary of state.

§ 948. Consequence of neglect.—For every neglect of magistrate, clerk, or sheriff to comply with the requirements of this title, he forfeits the sum of fifty dollars, to be recovered in a civil action, in the name of the people of this state.

§ 949. Duty of secretary of state.—The secretary of state must cause this title to be published, with forms

and instructions for the execution of the duties therein prescribed, and to be distributed among the officers therein mentioned; the expense of which must be paid by the treasurer, on the warrant of the comptroller. He must also annually report to the legislature, the results of the information obtained in pursuance of this title.

TITLE XI.

Miscellaneous Provisions, respecting Special Proceedings of a Criminal Nature.

SEC. 950. Parties to a special proceeding, how designated.
951. Provisions respecting entitling affidavits, applicable.
952. Courts and magistrates to issue subpœnas, and punish disobedience of witnesses.

§ 950. Parties to a special proceeding how designated.—The party prosecuting a special proceeding of a criminal nature, is designated in this Code, as the complainant, and the adverse party as the defendant.

§ 951. Provisions respecting entitling affidavits, applicable.—The provisions of this Code, in respect to entitling affidavits in a criminal action, are applicable to special proceedings of a criminal nature.

§ 952. Courts and magistrates to issue subpœnas, and punish disobedience of witnesses.—All courts and magistrates having before them special proceedings of a criminal nature, may issue subpœnas for witnesses, and punish their disobedience in the same manner as in criminal actions.

GENERAL PROVISIONS AND DEFINITIONS APPLICABLE TO THIS CODE.

SEC. 953. Abatement of nuisance.
954. No part of this Code retroactive, unless expressly so declared.
955. Present tense includes future, etc.
956. Definition of "writing."
957. Definition of "oath."
958. Definition of "signature."
959. Definition of "magistrate."
960. Definition of "peace officer."
961. Definition of "court of sessions."
962. To what actions and proceedings this Code applies.
963. When Code to take effect.

§ 953. Abatement of nuisance.—Where a person is convicted of keeping or maintaining a public nuisance, and sentenced to punishment, the court may in its judgment, in addition to or in place of other punishment, direct that the nuisance be abated, and issue an order to the sheriff of the proper county to execute the judgment as therein directed.

See Syracuse, etc., Co. *v.* Peo., 66 Barb., 25.

§ 954. No part of this Code retroactive, unless expressly so declared.—No part of this Code is retroactive, unless expressly so declared.

§ 955. Present tense includes future, etc.—Unless when otherwise provided, words used in this Code in the present tense, include the future as well as the present. Words used in the masculine gender comprehend as well the feminine and neuter. The singular number includes the plural, and the plural the singular. And the word "person" includes a corporation, as well as a natural person.

§ 956. Definition of "writing."—The term "writing" includes printing.

§ 957. Definition of "oath."—The term "oath" includes an affirmation.

§ 958. Definition of "signature." — The term "signature" includes a mark, when the person cannot write; his name being written near it, and the mark being witnessed by a person who writes his own name as a witness, except to an affidavit or deposition, or a paper executed before a judicial officer; in which case the attestation of the officer is sufficient.

§ 959. Definition of "magistrate." — Unless when otherwise provided, the term "magistrate" signifies any one of the magistrates mentioned in section 147.

§ 960. Definition of "peace officer." — Unless when otherwise provided, the term "peace officer" signifies any one of the officers mentioned in section 154.

§ 961. Definition of 'court of sessions." — The term "court of sessions" includes "the court of general sessions in the city and county of New York," wherever such inclusion does not conflict with other provisions of this Code.

§ 962. To what actions and proceedings this Code applies. — This Code applies to criminal actions, and to all other proceedings in criminal cases which are herein provided for, from the time when it takes effect; but all such actions and proceedings, theretofore commenced, must be conducted in the same manner as if this Code had not been passed; except that if in any local statute confined, by its terms, to a town or village or to a county or city other than the city and county of New York, any proceeding is prescribed, in addition to those prescribed by this Code and not inconsistent with it, the same shall remain unaffected by it.

Peo. *v.* Sessions, 62 How. P. R., 415.

§ 963. When Code to take effect. — This Code shall take effect on the first day of September, 1881. When construed in connection with other statutes, it must be deemed to have been enacted on the fourth day of January, eighteen hundred and eighty-one, so that any statute enacted after that day is to have the same effect as if it had been enacted after this Code.

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FORMS.

No. 1.

§ 12. Articles of Impeachment.

Articles exhibited by the assembly of the state of New York in the name of themselves and all the people of the state of New York, against , a , in maintenance of their impeachment against him for wilful and corrupt misconduct in his said office of

Article I.

That the said , being a civil officer of the state of New York, to wit: a , unmindful of the duties of his said office, and in violation of his oath of office, in this, to wit: that the said , acting in his said office, did

to the great injury of , and to the great scandal and reproach of the people of the state of New York, and their dignity, and more particularly of the said office of

Article II., Etc., Etc.

And the said assembly, saving to themselves by protestation the liberty of exhibiting at any time hereafter any of the articles of impeachment against the said , and also of replying to the answers which he may make to the impeachment aforesaid, and of offering proof of the said matters of impeachment, to demand that the said be put to answer all and every of the said matters, and that such proceedings, trial and judgment may be thereupon had and given as are conformable to the constitution and laws of the state of New York; and the said assembly are ready to offer proof of the said matters at such time as the

honorable court for the trial of impeachments may order and appoint.

By the assembly of the state of New York, in session duly convened at the capitol in the city of Albany, N. Y., this day of , in the year of our Lord one thousand eight hundred and eighty .

Speaker.

Clerk.

} *Committee.*

No. 2.

§ 17. Summons to Court for Trial of Impeachment.

The people of the state of New York, by the grace of God free and independent:

To

A judge of the court of appeals of the state of New York (or senator of the state of New York, for the senatorial district thereof), and a member of the court for the trial of impeachments, and to the court for the trial of impeachments, greeting:

The court for the trial of impeachments is hereby summoned to convene and assemble to meet at the capitol in the city of Albany on the day of , 188 , at o'clock in the noon, and you are hereby required and summoned to be and appear in your own proper person, at the time and place above stated, to organize and sit with the said court, upon the trial of certain articles of impeachment then and there to be tried and determined before the said court, which have been made and presented by the assembly of the state of New York to the senate of the state of New York, against , a , for wilful and corrupt misconduct in office, and hereof fail not.

Dated at the city of Albany, N. Y., this day of , 188

President of the Senate of the State of New York.

No. 3.

§ 18. Oath to Members of Court.

You do solemnly swear (*or affirm*) that you will truly and impartially try and determine according to evidence the articles of impeachment preferred against a for wilful and corrrupt misconduct in office, about to be presented before this court for the trial of impeachments, of which you are a member, for its determination.

No. 4.

§ 20. Writ and Process of Court.

The people of the state of New York, by the grace of God, free and independent:

To greeting:

You and each of you are hereby commanded and required that, laying aside all other business, and all pretences and excuses whatsoever, you be and appear in your own proper persons before our court for the trial of impeachments, at on the day of A. D., 188 , at o'clock M. of that day, to be examined as witnesses, and to testify the truth and give evidence on our behalf (or on behalf of the respondent hereafter named) concerning articles of impeachment then and there to be tried and determined before this court, which have been made against a , and hereof fail not at your peril.

Witness: The Hon. , the president of the Senate, this day of , A. D. 188

Attest.
Clerk of the Senate.

No. 5.

§ 44. Order Removing Indictment.

COURT OF SESSIONS—County of .

The People of the State of New York
against

It appearing to the satisfaction of this court that , county judge of the said county of

is incapable of acting in the above criminal action pending herein, by reason of [here set forth cause.]

It is ordered that the same be and it is hereby transferred to the court of oyer and terminer of the said county of , [or city court, as the case may be.]

No. 6.

§ 45. Order for Sessions.

Terms of the county court and court of sessions of the county of :

I do hereby order and appoint the terms of the county court, and of the court of sessions of the county of , for the year 188 , to be held at the , in the of , and at the times following, viz:

On the second Monday of January.
On the third Monday of March.
On the third Monday of June.
On the second Monday of September, and
On the second Monday of November.

It is further ordered, that a grand and trial jury be drawn and summoned to attend each of said terms.

Dated, , 18 .

, County judge of the county of .

No. 7.

§ 68. Albany Special Sessions. Order for Bench Warrant.

At a court of special sessions, held at the City Hall, in the city of Albany, on the day of 18 .

Present — Hon. A. G., Recorder.

THE PEOPLE *vs.*

The above named having neglected to appear before this court, agreeably to a recognizance given by him to appear thereat. Now, on motion of , district attorney, it is ordered that a warrant issue for the arrest of said , and directing the officer

executing the same to bring the said before this court, if the court be then in session, and if the court is not then in session, that the said officer commit the said to the common jail of Albany county, there to remain until delivered by due course of law.

No. 8.

Id. Bench Warrant.

CITY OF ALBANY, }
COURT OF SPECIAL SESSIONS. }

To the sheriff of the county of Albany, the constables of the city of Albany, the members of the police force of the city of Albany, and to the special officers of the district-attorney of Albany county, and to each of you, and to the keeper of the common jail of the city of Albany:

The people of the state of New York command you to take , who was duly recognized pursuant to law, to appear in our court of special sessions of the city of Albany, to answer to a complaint for triable therein, and who has neglected to appear thereat, agreeably to the requirements of such recognizance, and forthwith bring h before our said court, at the City Hall, in the city of Albany, in said county, if our said court shall be at the time of such arrest in session, together with this warrant; but if the said court be not in session, you are hereby commanded to commit the said to the common jail of the county of Albany, there to remain till h be delivered by the due course of law.

Witness: Hon. Anthony Gould, recorder of the city of Albany, at the City Hall, in the city of Albany, this day of 188 .

, Clerk.

No. 9.

§ 84. Complaint and Examination on Application for Surety of the Peace

COUNTY OF } ss.

of the of , upon oath complains and informs that of said of , hath threatened to commit

a crime against the property of , in that said has threatened to and that hath just reason to fear that the said will commit the said crime threatened. The said therefore prays surety of the peace to be granted against the said , and this doth not from any private malice or ill-will toward the said , but simply because is afraid, and hath good reason to fear that the said will commit the said crime threatened.

Wherefore the said prays that a warrant may issue in due form of law against the said , and that may be dealt with touching the premises as to law and justice shall appertain.

[*Signature.*]

On the day of 188 the said personally appeared before me, and made oath to the truth of the foregoing complaint and information subscribed by

[*Signature.*]

No. 10.

§ 86. Warrant for Arrest; Security to Keep the Peace.

STATE OF NEW YORK, }
COUNTY OF } ss.
OF }

In the name of the people of the state of New York: To any peace officer of the county of , greeting:

Whereas, an information has been laid before me, justice of the peace of the of , in and for the said county, under the oath of , in the aforesaid county, that one , of the of , did, on or about the day of , 188 , at the of in said county, threaten to commit the crime of against the person of , and alleging there is just reason to fear the commission of said threatened crime, and further praying that a warrant issue for the arrest of said accused, and that he be dealt with pursu-

ant to the provisions of the Code of Criminal Procedure, and after examining on oath said complainant and reducing h examination to writing and caused the same to be duly subscribed; by which examination it appears that there is just reason to fear the commission of the crime threatened by said .

These are, therefore, to command you forthwith to arrest the said , so complained of, and to bring h before me, at my office in the of , within said , to answer unto the matters contained in said information, and to be further dealt with according to law.

Given under my hand, at the of , in said county, this day of , 188 .

[*Signature.*]

No. 11.

§ 86. Warrant for Surety of the Peace on Threat to Commit a Crime against Property.

Court, county of , ss:

In the name of the people of the state of New York: To any peace officer of the county of , greeting:

Whereas, complaint and information on oath has this day been duly laid by of the of , in the county of , before me, , a justice of the said of , that on the day of 188 at the of , in said county, one did threaten to commit a crime against the property of in that and that he has just cause to fear that the said will and has demanded surety of the peace against the said and it appearing to me upon examination on oath, of the said and of that there is just reason to fear the commission of said crime threatened by the said against the peace of the people of the state of New York, and the form of the statute in such case provided;

We, therefore, command you, forthwith to arrest and take the body of the said and bring before the said , at the in the said

of , with this warrant and a return of your doings thereon endorsed, to answer the said complaint and information, and to be dealt with according to law. Hereof fail not at your peril

Witness, the said , at the , of , in the county aforesaid, the day of , 188

[*Signature.*]

By virtue of the within warrant, I have arrested the within named and now have him before the magistrate by whom this warrant was issued.

Dated 188 .

No. 12.

§§ 85. 86. Examination.

COUNTY OF ALBANY, ss.:

The examination of and taken upon oath before me, , a justice of said of , on the day of 188 , on complaint and information made before me, by the said against for the purpose of obtaining surety of the peace.

The said on oath aforesaid, before me, saith that on the day of , 188 , at in said of , did threaten this deponent that would the said

The said on oath aforesaid, before me, saith that was present at the of at the time mentioned in the above examination of , and that heard the said on that occasion make use of the threats above stated in the said examination, and that this deponent hath at various times and on divers occasions within the last months heard the said assert and swear that would the said

Taken before me the day and year first above mentioned.

[*Signature.*]

No. 3.

§ 89. Undertaking to Keep the Peace.

STATE OF NEW YORK, }
COUNTY OF } ss.
OF , }

Whereas, an information was laid before , esq., justice of the peace, on the day of , 188 that had, at said , on the day of , 188 , threatened to commit the crime of

against the *person* and said magistrate having examined on oath the complainant *and witnesses*, and reduced *h examination* to writing, and caused *them* to be duly subscribed;

Whereupon a warrant was issued, and proceedings were duly taken before such magistrate, and it appears by the evidence that there is just reason to fear the commission of the said crime, and the said person complained of is required to give security in the sum of $ to keep the peace, pursuant to the provisions of the Code of Criminal Procedure;

Now, therefore, we, the undersigned, residing in the of , N. Y., do hereby acknowledge ourselves to be jointly and severally indebted to the people of the state of New York in the sum of dollars, to be well and truly paid, if default shall be made in the conditions following: THE CONDITIONS of this undertaking are such, that if the said person complained of shall personally appear at, and abide the order of, the next court of sessions of the county of , N. Y., and shall in the mean time keep the peace towards the people of this state, and particularly towards the said , the complainant, then this undertaking to be void, otherwise of full force.

Taken, subscribed and acknowledged, before me, this day of , 188 . }
[*Signature.*]

No. 14.

§ 90. Warrant of Commitment—Security to Keep the Peace.

STATE OF NEW YORK,
COUNTY OF } ss.
OF

In the name of the people of the state of New York:

To of the of , and to the keeper of the common jail of the county of

Whereas, , of the of , county of , N. Y., was charged under an information duly laid before me, the undersigned justice of the peace, with threatening to commit the crime of , against the by

And such proceedings were thereupon had before me, pursuant to the provisions of the Code of Criminal Procedure, that there appeared just reason to fear the commission of the crime threatened by said person complained of;

Whereupon *he*, the said accused, was required by me to enter into an undertaking in the sum of dollars, with sufficient *suret* , to abide the order of the next court of sessions of said county; and in the meantime to keep the peace towards the people of this state, and particularly towards the complainant.

And whereas, said accused has neglected and omitted to give or enter into said undertaking so required of him; by reason whereof he is hereby committed.

These are, therefore, to command you, the said constable, forthwith to convey and deliver him, the said , into the custody of the keeper of the common jail of said county; and you, the said keeper, are hereby required to receive the said into your custody in the said jail, and him safely keep and detain there, until he shall find such sureties as aforesaid, or be discharged according to law.

Given under my hand, at the said of , this day of , 188 .

[*Signature.*]

No. 15.

§ 102. Requisition of Sheriff for Military Aid.

"To Brigadier-General (or other commanding officer):

Sir: Having been this day resisted in the execution of a warrant of a magistrate for the arrest of A B., charged with murder (or having reason to apprehend that resistance is about to be made to the execution of the process), I, the sheriff of the county of , in pursuance of the statutes of this state, in such case made and provided, do hereby require you and the military under your command (or men of your command), armed and equipped as the law directs, to aid me in the execution of said warrant (or other process, as the case may be), and that you report yourself forthwith to me (or on the day of , 18 , at 9 o'clock, noon) with your said command (or with the said number of men), ready for service at .

Dated , 18 .

C. D., Sheriff of county."

No. 16.

§ 103. Certificate of Resisters.

To the court (from which process issued):

I, the sheriff of county, do hereby certify to the court that the following are the names of the persons resisting the process (describing it) and their aiders and abettors.

Dated 18 .

C. D., Sheriff of county.

No. 17.

§ 111. Requisition of Sheriff for Military to quell a Riot.

To Brigadier-General (or other commanding officer):

Sir: A riot and breach of the peace (or unlawful assembly, as the case may be) having occurred at , in the county of , I, the sheriff of said county, in pursuance of the statute in such case made and provided, require you with (describe the kind and number of troops), armed and equipped as the law directs, to

aid me in quelling said riot and breach of the peace; and that you report yourself forthwith to me at , with your said command ready for service.

Dated , 18 .

C. D., Sheriff of county.

No. 18.

§ 138. Bond to Change Venue in Libel cases.

Know all Men by these presents, that I, principal and and sureties, of the of and state of New York are held and firmly bound unto of and a resident of the state of New York in the sum of dollars, to be paid to the said or to certain attorney, executors, administrators or assigns. For which payment well and truly to be made we bind ourselves and our heirs, executors or administrators, jointly and severally, firmly by these presents. Sealed this day of , in the year of our Lord, one thousand eight hundred and .

The condition of this obligation is such, that whereas an indictment has been found against the above named in the court of in and for the county of , for libel against the above named , in a certain paper published at and known as , and whereas the above named desires to have the place of trial changed to county where said libel was printed as alleged, now therefore if the above bounden if the place of trial be changed as aforesaid, and he shall be convicted of the said libel, shall and do well and truly pay or cause to be paid to the above named , his reasonable and necessary traveling expenses in going to and from his place of residence and place of trial, and his necessary expenses in attendance thereon, without fraud or delay then the preceding obligation to be void, otherwise to remain in full force and virtue.

[L. S.]
[L. S.]
[L. S.]

STATE OF NEW YORK, } ss:
county of . }

On this day of in the year one thousand eight hundred and before me, the subscriber, personally came to me known to be the person described in and who executed the within instrumont, and acknowledged that he executed the same.

(Indorsed). I do hereby approve of the sufficiency of the within named sureties.

Dated .

T. R. W., Justice Supreme Court.

No. 19.

§ 151. Information for Affray.

county of , ss:

being duly sworn, deposes and says, that he in said of ; that, on the day of 188 at the of , in said county, did, with force and arms, make an affray, by fighting with in a public place, to wit: against the peace of the people of the state of New York, and the form of the statute in such case provided.

Taken, subscribed and sworn to before me, this day of 188

No. 20.

Id. Information for Arson.

county of , ss.:

being duly sworn, deposes and says: That he resides in the of that in the time of the day of 188 one did willfully set fire to or burn a certain to wit: in the of (in which there were at the time human beings,) to wit: by

Taken, subscribed and sworn to before me, this day of , 188 . }

No. 21.

Id. Information for Arson, 2d and 3d Degrees.

county of , ss.:

being duly sworn, deposes and says: That he resides in the of ; that in the time of the day of , 188 , in the of one did willfully set fire to or burn the shop, warehouse or other building, to wit: in which there was not at the time a human being; said adjoined to or was within the curtilage of an inhabited dwelling-house, to wit: so that the said house was endangered by such firing; in that said did

Taken, subscribed and sworn to before me, this day of 188 .

No. 22.

Id. Information for Assault and Battery.

COURT, COUNTY OF , } ss:

being duly sworn, deposes and says: That he in the said of , that on the day of , 188 , at the of , in said county, one with force and arms, did make an assault, and him the said did then and there beat, wound and ill-treat, without cause or provocation by

Subscribed and sworn to before me, this day of 188 .

No. 23.

Id. Information for Assault with Intent to Kill.

county of ss:

being duly sworn, deposes and says: That he resides in the of , that on the of , 188 , at the of , in said county, with force

and arms, in and upon the said
then and there being, feloniously did make an assault, and the said with a certain which the said then and there in hand had and held, the said being then and there a deadly weapon, and such means and force as were then and there likely to produce death, feloniously did beat, strike, cut and wound with intent him, the said then and there, feloniously and willfully to kill by

Taken, subscribed and sworn to before me, this day of , 188 .

No. 24.

Id. Information for Assault with Intent to Kill with Firearms.

county of ss:

being duly sworn, deposes and says: That he resides in the of that, on the day of 188 , at the of , in said county, with force and arms, in and upon the body of in the peace of the said people then and there being, feloniously did make an assault, and to, or toward and against the said a certain then and there loaded and charged with gunpowder and lead, which the said then and there had and held the same, being then and there likely to produce death, willfully and feloniously did then and there shoot off and discharge with intent him the said
thereby then and there feloniously and willfully to kill by

Taken, subscribed and sworn to before me, this day of , 188 .

No. 25.

Id. Information for Assault with Intent to Ravish Woman Ten Years and Over.

county of , ss:

being duly sworn, deposes and says: That he resides in the of ; that

on the day of , 188 , at the of in said county, with force and arms, in and upon , she then and there being a woman of the age of ten years and upwards, in the peace of God and of the said people then and there being, violently, forcibly and feloniously, did make an assault, and her, the said then and there violently, forcibly and against her will, feloniously did ravish and carnally know by

Taken, subscribed and sworn to before me, this day of , 188 .

No. 26.

Id. Information for Assault, etc., on Child under Ten Years of Age.

county of , ss:

being duly sworn, says that he resides in , that, on the day of , 188 , at the of , in said county, , with force and arms, in and upon one , she then and there being a female child under the age of ten years, to wit, of the age of years, in the peace of God and the said people then and there being, did make an assault, and her, the said , then and there did beat, wound and ill treat, so that her life was greatly despaired of, with intent, her, the said , feloniously, to unlawfully and carnally know by

Taken, subscribed and sworn to before me, this day of , 188 .

No. 27.

Id. Information for an Assault on an Officer.

county of , ss:

being duly sworn, deposes and says: That he, , that on the day of , 188 , at the of , in said county, one , with force and arms, in and upon one , he then and there being a and peace officer of the said of

, and a , unlawfully and violently, without justifiable or excusable cause, did assault, beat, bruise, wound and use personal violence upon, and him evil treat, while he, the said , so being a and peace officer aforesaid, was then and there lawfully engaged in the discharge of his duties as such and peace officer of said of , and him, the said peace officer as aforesaid, did unlawfully and willfully resist in the discharge of his duties as such peace officer, against the peace of the people of the state of New York, and the form of the statute in such case provided by

Taken, sworn to and subscribed before me, this day of , 188 .

No. 28.

Id. Information for Confining Cows in a Crowded Condition, etc.

county of , ss:

being duly sworn, deposes and says: That he resides in the of ; that on the day of , 188 , at the of , in the county of , one wickedly, unlawfully and wilfully then and there, to wit, in , in said city, did keep divers cows for the production of milk for market, sale or exchange in a crowded and unhealthy condition, or did feed divers cows, then and there kept by him, the said , on food that produces impure, diseased and unwholesome milk, to wit, distillery waste, usually called swill, or , in violation of the statutes in such case made and provided.

Taken, subscribed and sworn to before me, this day of , 188 .

No. 29.

Id. Information for Injury to Animal by Act or Neglect.

county of , ss:

being duly sworn, deposes and says: That he resides in the of ; that on the day of

188 , at the of , in the of , one did by his act or neglect, wilfully, wickedly and maliciously kill, maim, wound, injure, torture and cruelly beat a certain horse, mule, ox, cattle, sheep or other animal, to wit, , belonging to him, the said , or to one , by then and there

Taken, subscribed and sworn to before me, this day of , 188 .

No. 30.

Id. Information for Keeping, etc., Place for Fighting Animals.

county of , ss:

being duly sworn deposes and says: That he resides in the of ; that on the day of 188 , at the of in the county of , one wilfully, unlawfully and wickedly, did keep, use, was connected with as , interested in the management of, did receive money for the admission of divers persons to a certain place, to wit:

for the purpose of, and such place was then and there kept or used for the purpose of fighting or baiting certain bulls, bears, dogs, cocks or other creatures, to wit:

Taken, subscribed and sworn to before me, this day of , 188 .

No. 31.

Id. Information for Overdriving, etc., Any Living Creature.

county of , ss:

being duly sworn, deposes and says: That he resides in the of ; that on the day of , 188 , at the of one , did willfully, unlawfully, wickedly, or cause or procure to be overdriven, overload, torture, torment, deprive of necessary sustenance, unnecessarily beat, cruelly beat, needlessly mutilate, needlessly kill, a cer-

tain living creature, to wit:
by then and there

Taken, subscribed and sworn to before me, }
this day of , 188 . }

No. 32.

Id. Information for Setting on Foot, etc., Fights Among Game Animals.

county of , ss:
being duly sworn, deposes and says, that he resides in the of , that on the day of , 188 , at the of , in the county of , one did wickedly, unlawfully and willfully set on foot, instigate, move to, carry on, promote, engage in as a witness, assistant, umpire or judge, or did towards the furtherance of a premeditated fight or contention between game birds, game cocks, dogs, bulls, bears, dogs and rats, dogs and badgers or other animals, to wit: which had been theretofore and was then and there, to wit: on the day aforesaid at the and in the county aforesaid. premeditated by certain persons who then and there, to wit: at the time aforesaid, and in the place aforesaid, did have the ownership or custody of such animals, to wit: of the aforesaid in violation of the statute in such case made and provided.

Taken, subscribed and sworn to before me, }
this day of , 188 . }

No. 33.

Id. Information Against Disorderly Child.

STATE OF NEW YORK, }
COUNTY OF , } ss:

being duly sworn, deposes and says, that he in said of ; that is a disorderly child, for that he deserted h home without good and sufficient cause, and kept com-

pany with dissolute or vicious persons, against the lawful commands of h and is a disorderly child within the intent and meaning of the statute; and is of the age of years, that the facts upon which this affidavit is based are as follows:

Taken, subscribed and sworn to before me, this day of , 188 .

No. 34.

Id. Information for Disorderly House.

county of , ss:

being duly sworn, deposes and says: That he resides in that the premises known as No. street, in the of in said county, were on the day of 188 , kept, maintained, conducted and occupied by as a common, ill-governed and disorderly house, and common bawdy-house and house of prostitution, and a resort for tipplers, drunkards, common prostitutes and reputed thieves, with other vile, wicked, idle, dissolute and disorderly men and women, and reputed thieves, who, or most of whom, are in the practice of drinking, dancing, quarreling, fighting, whoring, rioting, disturbing the peace, cursing and swearing at almost all hours of the day and night, to the great damage and common nuisance of the people of the state of New York, there inhabiting, residing in the neighborhood, and passing thereby; that the grounds of deponent's knowledge are

Taken, sworn to and subscribed before me, this day of 188 .

No. 35.

Id. Information for Permitting, etc., Place to be Kept and Used for Fighting Dogs, etc.

county of , ss:

being duly sworn, deposes and says: That he resides in the of ; that on the day of , 188 , one did permit and suffer

a certain place, to wit: to be kept and used for the purpose of fighting or baiting bulls, bears, dogs, cocks or other creatures, to wit: he, the said being the thereof.

Taken, subscribed and sworn to before me, this day of , 188 .

No. 36.

Id. Information for Embezzlement.

county of , ss:

being duly sworn, deposes and says: That he resides in the of ; that on or about the day of 188 , at the of , in said county, one being a servant or agent of and not an apprentice, nor within the age of eighteen years, did feloniously embezzle, and convert to his own use, without the assent of the said , the property of the said which had come into the possession of said as such servant or agent by

Taken, subscribed and sworn to before me, this day of . 188 .

No. 37.

Id. Information for False Pretences.

county of , ss:

being duly sworn, deposes and says: That he resides in the of ; that, on the day of , 188 , at the of , in said county, , with force and arms, with intent feloniously to cheat and defraud one did then and there feloniously, unlawfully, knowingly and designedly, falsely pretend and represent to the said that and the said then and there believing the said false pretenses and representations so made as aforesaid, by the said , and being deceived thereby, was induced by reason of the false pretenses

and representations so made as aforesaid to deliver, and did then and there deliver to the said of the value of dollars, of the proper moneys, valuable things, goods, chattels and personal property and effects of the said , and the said did then and there receive and obtain the said of the value of dollars from the said of the proper moneys, valuable things, goods, chattels and personal property and effects of the said by means of the false pretenses and representations aforesaid, with intent feloniously to cheat and defraud the said of the said of the value of dollars; that in fact and in truth the pretenses and representations so made as aforesaid by the said to the said was and were in all respects utterly false and untrue; that in fact and truth the said well knew the said pretenses and representations as by him made as aforesaid to the said to be utterly false and untrue at the time of making the same.

That the said by means of the false pretenses and representations aforesaid, feloniously, unlawfully, falsely, knowingly and designedly did receive and obtain from the said of the value of dollars of the proper moneys, valuable things, goods, chattels and personal property and effects of the said with intent feloniously to cheat and defraud the said of the same

Taken, subscribed and sworn to before me, this day of , 188 .

No. 38.

Id. Information for Felony or Misdemeanor.

county of , ss:

being duly sworn, deposes and says: That he resides in ; that one at the of , in the county of aforesaid, on the day of , 188 , did feloniously, wrongfully, unjustly, unlawfully, wickedly, wilfully, corruptly, falsely, maliciously and knowingly violate chapter of the laws

of the state of New York, passed , in that he did

Taken, subscribed and sworn to before me, this day of , 188 .

No. 39.

Id. Information for Forgery.

county of , ss:

being duly sworn, deposes and says: That he resides in the of ; that one at in , with intent to injure and defraud, feloniously did falsely make, forge and counterfeit, and cause and procure to be falsely made, forged and counterfeited, and willingly act and assist in the false making, forging and counterfeiting a certain , which said false, forged and counterfeited is as follows, that is to say, by

Taken, subscribed and sworn to before me, this day of , 188 .

No. 40.

Id. Information for Assault—Sharp, Dangerous Weapon.

county of , ss:

being duly sworn, deposes and says: That he resides in the of that on the day of 188 , at the of , in said county, with force and arms, in and upon the said then and there being, did make an assault, and the said with a certain the said being then and there a sharp, dangerous weapon, which the said then and there, in his hand had and held, then and there did beat, strike, cut, stab and wound, with intent upon him, the said then and there feloniously to do bodily harm, without justifiable or excusable cause, by

Taken, subscribed and sworn to before me, this day of , 188 .

No. 41.

Id. Information for Bigamy.

county of ss:
being duly sworn, deposes and says: That he resides in the of that one on the day of 188 , at the of did marry one and the said did then and there have for and that the said being so married afterward, to wit: on the day of , 188 , with force and arms at the of in the county of feloniously did marry and take as one and to the said was then and there married, the said being then and there living and in full life.

Taken, subscribed and sworn to before me, this day of , 188 .

No. 42.

Id. Information for Breach of the Peace.

county of , ss:
being duly sworn, deposes and says: That he is a in said town of in said county, that on the day of , 188 , one did make a breach of the peace by quarreling, fighting and making a loud noise, and collecting a crowd in in said of .

Taken, subscribed and sworn to before me, this day of 188 .

No. 43.

Id. Information for Acts Tending to Create a Breach of the Peace.

county of , ss.:
being duly sworn, deposes and says: That he in said of , that on the day of 188 , at the city of , in said county, one did which had a tendency

to excite h , and cause h to create a breach of the peace against the peace of the people of the state of New York, and the form of the statute in such case provided.

Taken, subscribed and sworn to before me, this 188 .

No. 44.

Id. Information for Burglary, First Degree, and Larceny.

county of , ss:

being duly sworn, deposes and says, that he resides in the of ; that, on the day of 188 , at the of , in said county, with force and arms, about the hour of in the night time of the same day, the dwelling-house of another, to wit, of one there situate, feloniously and burglariously, did break into and enter by forcibly bursting and breaking an outer door of the said dwelling, or by in which said dwelling-house there was then at the same time some human being, to wit: with intent feloniously and burglariously to commit some crime therein, to wit: then and there the goods and chattels of the said in the said dwelling-house then and there being, and then and there feloniously and burglariously to steal, take and carry away, and of the value of dollars, of the goods, chattels and property of the said in the said dwelling-house then and there being, feloniously, burglariously, did steal, take and carry away by

Taken, subscribed and sworn to before me, this day of , 188 .

No. 45.

Id. Information for Burglary and Larceny.

county of , ss:

being duly sworn, deposes and says: That he resides in the of that, on the day of , 188 , at

the of , in said county, with force and arms, the of one there situate, feloniously and burglariously did break into and enter, the same being a as above, in which divers goods and merchandise and valuable things were then and there kept for use, sale and deposit, to wit, the goods and chattels of the said in said as above, then and there being, then and there feloniously and burglariously to steal, take and carry away of the value of dollars, of the goods and chattels and property of the said in the said as above, so kept as aforesaid, then and there being feloniously and burglariously did steal, take and carry away by

Taken, subscribed and sworn to before me, this day of , 188 .

No. 46.

Id. Information Against Persons Having Custody of Child Permitted to Beg, etc.

county of , ss:

being duly sworn deposes and says: That he resides in the of that has the custody of a child under the age of fourteen years, and permits and neglects to restrain such child from begging, gathering, picking and sorting of rags, and from collecting cigar stumps, bones and refuse from markets in said of , in that he

Taken, subscribed and sworn to before me, this day of , 188 .

No. 47.

Id. Information as to Violation of Ordinances.

county of ss:

being duly sworn, deposes and says: That he resides in the of , N. Y.; that on the day of , 188 , in said

one did willfully and unlawfully violate
chapter of title of the laws and ordinances of
the of aforesaid, relating to
in that he did
Subscribed and sworn to before me,
this day of 188 .

No. 48.

Id. Information for Abandoning Maimed Creature in a Public Place.

county of , ss:
being duly sworn, deposes and says: That he resides in the of that on the day of , 188 , one did willfully, unlawfully and wickedly then and there abandon to die in a certain public place in said of , to wit: a certain maimed, sick, infirm and disabled creature, to wit:

Taken, subscribed and sworn to before
me, this day of , 188 .

No. 49.

Id. Information for Aiding, etc., Persons to Fight Dogs, etc.

ounty of , ss:
being duly sworn, deposes and says: That he resides in the of ; that on the day of , 188 , at the of one did willfully, unlawfully and wickedly encourage, aid and assist one to keep a certain place, to wit: or to receive money for the admission of divers persons to a certain place for the purpose of, and such place was then and there, by the aid of the said unlawfully kept and used by the said for the purpose of fighting, baiting certain bulls, bears, dogs, cocks or other creatures, to wit:

Taken, subscribed and sworn to before
me, this day of , 188 .

No. 50.

Id. Information for Allowing Disabled Animals to Lie in Highways, etc.

county of , ss:

being duly sworn, deposes and says: That he resides in the of ; that on the day of , 188 , at the of , one then and theretofore being the owner, driver or in possession of a certain old, maimed and diseased horse or mule, which had theretofore been turned loose or left disabled in a certain street, lane or public place in said of , to wit: did unlawfully, willfully and wickedly, for more than three hours after knowledge of such disability, allow such horse or mule to lie in a certain street, lane, or public place in said city therein, to wit:

Taken, subscribed and sworn to before me, this day of , 188 .

No. 51.

Id. Information for Carrrying Creatures in a Cruel Manner.

county of , ss:

being duly sworn, deposes and says: That he resides in the of ; that on the day of , 188 , one did willfully, unlawfully and wickedly carry or cause to be carried in or upon a , a certain creature, to wit, , in a cruel and inhuman manner, by then and there

Taken, subscribed and sworn to before me, this day of , 188 .

No. 52.

Id. Information for Keeping, etc., a Room, etc., for Gambling.

county of , ss:

being duly sworn, deposes and says: That he resides in the of ; that on the

day of , 188 , and at the present time, did and does keep a room, building, arbor, booth, shed, tenement, boat or float, to wit: at in the of , to be used or occupied for gambling, to wit: or did and does knowingly permit the same to be used or occupied for gambling, to wit: being the owner, superintendent or agent of a room, building, arbor, booth, shed, tenement, boat or float, to wit: at in the of did and does rent the same to be used or occupied for gambling, to wit:

Taken, subscribed and sworn to before me, this day of , 188 .

No. 53.

Id. Information for Seizure, etc., of Gambling Apparatus.

county of , ss:

being duly sworn, deposes and says: That he resides in the of ; that one has committed an offense, in that he did and has as deponent has reason to believe and does believe upon his person or at in the of certain articles of personal property, to wit: or gambling tables, devices or apparatus for the purpose of or public or private lottery policies, to wit: the discovery of which may lead to establish the truth of said charge for which complaint is hereby made against said .

Wherefore deponent prays that a warrant may issue as provided by law for the arrest of said for diligent search to be made for such property, tables, devices or apparatus, and if found, to bring the same before the magistrate or justice issuing the warrant, or in case of his absence or inability to act, before the nearest or most accessible magistrate in the county of .

Taken, subscribed and sworn to before me, this day of , 188 .

No. 54.

Id. Information for Interfering with an Officer.

STATE OF NEW YORK, } ss:
COUNTY OF , }

being duly sworn, deposes and says: That he is a in said of ; that on the day of , 188 , at the of , in said county, with force and arms, did unlawfully, designedly and feloniously, forcibly interfere with , he then and there being a of the of , and having in legal custody one upon a criminal charge, to wit, upon the charge of committed by him, the said upon one by .

Taken, subscribed and sworn to before me, this day of , 188 . }

No. 55.

Id. Information for Killing Unborn Quick Child.

county of , ss:

being duly sworn, deposes and says: That he resides in the of ; that on the day of 188 , at in the county of one did feloniously and wilfully kill an unborn quick child by an injury to the mother of such child, in that he did

Taken, subscribed and sworn to before me, this day of , 188 . }

No. 56.

Id. Information for Larceny.

county of , ss:

being duly sworn, deposes and says: That he resides in the of , that on the day of 188 , at the of , in said county, divers goods and chattels of the value of dollars and cents, that is to say:

were feloniously stolen, taken and carried away from the

possession of the said , and that he has just cause to suspect and believe, and does suspect and believe, and there is probable cause to believe, that did steal, take and carry away the same; that the facts upon which this affidavit is based are as follows:

Taken, subscribed and sworn to before me, this day of , 188

No. 57.

Id. Information for Larceny from the Person.

county of , ss:
being duly sworn, deposes and says: That he resides in the of , that, on the day of , 188 , at the of , in said county, , with force and arms, from the person of , of the value of dollars, of the goods, chattels and personal property of the said then and there being found, feloniously did steal, take and carry away by

Taken, subscribed and sworn to before me, this day of , 188

No. 58.

Id. Information for Libel.

county of , ss:
being duly sworn, deposes and says: That he resides in the of ; that on the day of instant, at in said county, one did falsely, maliciously and scandalously frame, make, write and compose in a certain false, scandalous and libellous writing of, concerning and against the said to the purport and effect following, to wit:

and that with intention to scandalize and disgrace the said , and to bring him into contempt, infamy and disgrace, the said , did afterwards, to wit, on the day of , 188 , at the

aforesaid, openly deliver and publish to the said false, scandalous and libellous in that he did

Taken, subscribed and sworn to before me, this day of , 188 .

No. 59.

Id. Information for Malicious Mischief.

county of , ss:

being duly sworn, deposes and says: That he resides in ; that one on the day of 188 , at the of did maliciously or wantonly injure, or deface a monument or work of art, building, fence or other structure, or did destroy or injure an ornamental tree, shrub or plant, situated on a private ground or on a street, public place, public or private way or cemetery; or did paint, or print upon or in any other manner place upon or affix to any stone or rock, not a part of a building, or upon or to any bridge or tree, words, letters, characters or devices, stating, referring to or advertising, or intended to state, refer to or advertise the sale or manufacture of any property or article, profession, business, exhibition, amusement or place of amusement, or other thing, or did directly or indirectly cause any such act to be done, or did aid therein, by

Taken, subscribed and sworn to before me, this day of , 188 .

No. 60.

Id. Information for Malicious Trespass.

county of , ss:

being duly sworn, deposes and says: That he resides in street in the of , in the county aforesaid, that on the day of in said , one did maliciously, unlawfully, wilfully and wantonly by

Taken, subscribed and sworn to before me, this day of 188 .

No. 61.

Id. Information—Manslaughter, First Degree.

county of , ss:
being duly sworn, deposes and says: That he resides in the of ; that on the day of 188 , at in the county of one did feloniously kill one without a design to effect death, by the act, procurement or culpable negligence of said while said was engaged in by

Taken, subscribed and sworn to before me, this day of , 188 .

No. 62.

Id. Information for Mayhem.

county of , ss:
being duly sworn, deposes and says: That he resides in the of ; that on the day of , 188 , at the of , one then and there feloniously, wilfully and maliciously did on purpose, from premeditated design, or with intent to kill or commit a felony, to wit: cut out or disable the tongue of one , put out the eye of one , slit or destroy the lip, or slit or destroy the nose of one , cut off or disable a limb or member, to wit: of on purpose by

Taken, subscribed and sworn to before me, this day of , 188 .

No. 63.

Id. Information for Misdemeanor.

county of , ss:
being duly sworn, deposes and says: That he resides in ; that on the day of , 188 , in said , one did unlawfully and knowingly violate section of chapter of the laws of the state

of New York, relating to
in that he did

Taken, subscribed and sworn to before me, this day of , 188 .

No. 64.

Id. Information for Murder Perpetrated by an Act Dangerous to Others.

county of , ss:

being duly sworn, deposes and says: That he resides in the of ; that on the day of , 188 , at the of , in the county of , one did feloniously, wilfully and intentionally, by an act imminently dangerous to others, and evincing a depraved mind, regardless of human life, did kill one , although without any premeditated design to effect the death of any particular individual in that he did

Taken, subscribed and sworn to before me, this day of , 188 .

No. 65.

Id. Information for Murder Perpetrated in Commission of a Felony.

county of , ss:

being duly sworn, deposes and says: That he resides in the of , that on the day of , 188 , at the of in the county of , one did, feloniously and wilfully and intentionally, whilst engaged in the commission of a felony, kill one in that he did

Taken, subscribed and sworn to before me, this day of , 188 .

No. 66.

Id. Information for Murder Perpetrated from Deliberate Design.

county of , ss:

being duly sworn, deposes and says: That he resides in the of , that one of in the county of , on the day of , 188 , with force and arms, did then and there feloniously, wilfully and intentionally, and from a premeditated and deliberate design to effect the death of one kill the said by .

Taken, subscribed and sworn to before me, this day of , 188 .

No. 67.

Id. Information for Perjury.

county of , ss:

being duly sworn, deposes and says: That he resides in the of , that on the day of , 188 , instant, at the of in the county of , a certain action in which was plaintiff and was defendant, was before and that upon the of said action appeared as a witness for and on behalf of the said and was then and there duly and regularly sworn by the said as such ; that the evidence he should give relating to the matter in difference between the said parties should be the truth, the whole truth and nothing but the truth; and that upon the of the said action it then and there became material to inquire whether and that thereupon the said being so sworn as a witness as aforesaid, did then and there on the of said action falsely, wilfully and corruptly depose, swear and testify among other things, that ; whereas, in truth and in fact, the whereby the said did then and there wilfully and corruptly swear falsely and commit wilful and corrupt perjury.

Taken, subscribed and sworn to before me, this day of , 188 .

No. 68.

Id. Information to Obtain Warrant Against Fighting, etc.

county of , ss:

being duly sworn, complains, deposes and says: That he resides in the of ; that he has just and reasonable cause to suspect and does suspect that certain of the provisions of law relating to and affecting animals, and to prevent prize fights and fights among game animals, and for the prevention of cruelty to animals, are being and are about to be violated by , at and within the particular building and place within the known as and now occupied, kept and used by

Wherefore this deponent prays that a warrant may be immediately issued and delivered, pursuant to the statute in such case made and provided, to any person authorized by law to make arrest for such offenses, authorizing him to enter and search such building and place and to arrest the said , by whatsoever names they may be known or called, or any or either of them there present found violating any of said laws, and to bring such person, when so arrested, before the nearest magistrate of competent jurisdiction to be dealt with according to law.

Taken, subscribed and sworn to before me, this day of , 188 .

No. 69.

Id. Warrant to Prevent Prize Fights, Cruelty to Animals, etc.

COURT, OF , } ss:

In the name of the people of the state of New York:

To any sheriff, constable, marshal or policeman of the city and county of , greeting:

Whereas, has made oath, to and before me, , a justice in and for the of , that he has just and reasonable cause to suspect, and does suspect, that certain of the provisions of law relating to and affecting animals, and to prevent prize fights

and fights among game animals; and for the prevention of cruelty to animals, are being and are about to be violated by , at and within the particular building and place within the city and county aforesaid, known as , and now occupied, kept and used by

Now, therefore, I, a justice as aforesaid, do authorize you to enter and search the said building and place within the and of , known as , and to arrest the said by whatsoever names they may be known or called, or any or either of them there present found violating any of said laws, and to bring such person when so arrested before the nearest magistrate of competent jurisdiction to be dealt with according to law. Hereof fail not at your peril.

Witness, the said , at the of , in the county aforesaid, the day of , 188 .

[*Signature.*]

§ 193.

The within named , having been brought before me under this warrant, committed for examination to the sheriff of the county of

§ 170.

I do hereby order and direct that the arrest on within warrant may be made on Sunday or at night.

No. 70.

Id. Information as to Female under Sixteen Years Living in House of Prostitution.

county of , ss:

being duly sworn, deposes and says: That he resides in the of , that he has just and reasonable cause to suspect that a female child, of the age of years, is living, detained and kept, in a house and place No. street, in said of , for the purposes of prostitution. That the grounds of deponents suspicion are as follows:

Taken, subscribed and sworn to before me, this day of , 188 .

No. 71.

Id. Information for Public Intoxication.

COURT,
COUNTY OF , }

vs. }

county, ss:

being duly sworn, deposes and says: That he is ; that the above named defendant was on the day of , 188 , about M., intoxicated in a public street or place, to wit. in said of , contrary to the provisions of the act entitled "An act to suppress intemperance and to regulate the sale of intoxicating liquors," passed April 16, 1857, and the act amendatory thereof, passed May 11, 1869.

Subscribed and sworn to before, this day of 188 .

The defendant, immediately on being brought before said justice, was informed of the charge against h and h right to the aid of counsel in every stage of the proceedings, and before any other proceedings were had, plead guilty. Tried and convicted and fined $ and $ costs, or be committed to the penitentiary or jail of said county, for the term of days, unless the fine be sooner paid.

No. 72.

Id. Information for Receiving Stolen Goods.

county of , ss:

being duly sworn says: That he resides in the of , that, on the day of 188 , at the of , in said county, being a person of evil name and fame and dishonest conversations, and common buyer and receiver of stolen goods, with force and arms, of the value of dollars, of the goods and chattels of by then lately before feloniously stolen of the said unlawfully, unjustly and for the sake of wicked gain, did feloniously receive and have the said then and there well knowing the said

goods and chattels to have been feloniously stolen; that the facts upon which this affidavit is based are as follows:

Taken, subscribed and sworn to before me, this day of 188 .

No. 73.

Id. Information for Reckless Driving.

county of , ss:

being duly sworn, deposes and says: That he resides in the of , that one who was then and there driving a certain carriage, to wit, a upon a certain turnpike road or public highway within this state, to wit, upon a certain in the of which then and there was such a turnpike road or public highway, with or without passengers, in said carriage, did then and there at the time and place aforesaid wilfully, unlawfully, wickedly and maliciously run, cause or permit to be run his horses then and there attached.

Taken, subscribed and sworn to before me, this day of 188 .

No. 74.

Id. Information for Refusing to Aid an Officer.

STATE OF NEW YORK, COUNTY OF } ss:

being duly sworn, deposes and says: That he in said of ; that on the day of 188 , at the of , in said county, did wilfully and unlawfully disobey the command and request of the said being at the time a and peace officer of, in and for the said of , and an officer authorized to execute criminal process; and the said having as such officer, then and there commanded the assistance of the said in securing and conveying to the one of the of aforesaid, that had then and there been duly arrested by the said

policeman, and police officer as aforesaid, against the peace of the people of the state of New York, and the form of the statute in such case provided.

Taken, subscribed and sworn to before me, this day of 188 .

No. 75.

Id. Information for Rescuing a Prisoner.

county of , ss:

being duly sworn, deposes and says: That he in said of , that on the day of 188 , that the of in said county with force and arms, did unlawfully, designedly and feloniously, forcibly rescue from the custody of one he then and there being a and peace officer of the of , one a prisoner, then and there held in the legal custody of him, the said upon a criminal charge, to wit, upon the charge of committed by him, the said upon one by

Taken, subscribed and sworn to before me, this day of , 188 .

No. 76.

Id.. Information for Robbery—First Degree.

county of , ss:

being duly sworn, deposes and says: That he resides in the of ; that on the day of , 188 , at the of , in said county, , with force and arms, in and upon one , in the peace of God and of the said people then and there being, feloniously did make an assault, and him, the said , did then and there feloniously put in fear of some immediate injury to his person and in danger of his life, did then and there feloniously and violently steal, take and carry away from the person and against the will of

the said , value of dollars, of the goods, chattels and property of the said by

Taken, subscribed and sworn to before me, this day of , 188 .

No. 77.

Id. Information for Seduction.

county of , ss:

being duly sworn, deposes and says: That she resides in the of ; that on the day of , 188 , at the of , in said county, with force and arms, under promise of marriage, did seduce and have illicit connection with one , she, the said , then and there being an unmarried female of previous chaste character by

Taken, subscribed and sworn to before me, this day of , 188 .

No. 78.

Id. Information Against Person Selling, etc., Chattels.

county of , ss:

being duly sworn, deposes and says: That he resides in ; that he did, on the day of , 188 , hire, loan and let to one a , and said did, without the consent of , who is the owner thereof, sell and deliver the same, or did pawn or pledge the same at , to one and obtained thereon and therefor the sum of

Taken, subscribed and sworn to before me, this day of , 188 .

No. 79.

Id. Information Against Person Selling Material, etc., Furnished to be Manufactured.

county of , ss:

being duly sworn, deposes and says: That

he resides in the of , that on the day of , 188 , at the of one did wilfully pawn, pledge, sell and convert to h own use material, to wit: of the value of furnished to h by for the purpose of being manufactured into by

Taken, subscribed and sworn to before me, this day of , 188 .

No. 80.

Id. Information for Selling, etc., Mortgaged Property.

county of , ss:

being duly sworn, deposes and says: That he resides in the of , that on the day of , 188 , one gave, executed and delivered to a mortgage upon certain personal property, to wit: of the value of dollars.

That afterwards and on the day , 188 , at in said county of , while the said mortgage was a lien on the said personal property, the said with intent to defraud said the mortgagee of said property, or a purchasor of said property from said , did wilfully, maliciously and unlawfully sell, assign, exchange and secrete the aforesaid personal property so mortgaged or sold as aforesaid by said to said by

Taken, subscribed and sworn to before me, this day of , 188 .

No. 81.

§ 151. Warrant, General.

County of Albany [or as the case may be].

In the name of the people of the State of New York. To any peace officer in this State [or in the county of Albany, or as the case may be, as provided in sections one hundred and fifty-five and one hundred and fifty-six].

Information upon oath having been this day laid before me, that the crime of [designating it] has been committed, and accusing C. D. thereof.

You are therefore commanded forthwith to arrest the above-named C. D., and bring him before me, at [naming the place], or in case of my absence or inability to act, before the nearest or most accessible magistrate in this county.

Dated at the city of Albany [or as the case may be], this day of eighteen hundred

E. F., *Justice of the Peace.*
[or as the case may be.]

No. 82.

§ 151. Warrant for Seizure of Gaming Apparatus, etc.

COURT, OF , } ss:

In the name of the people of the state of New York: To any peace officer of the county of :

Whereas, complaint on oath, has been duly made before me, a justice of the of , that one

We, therefore, command you forthwith to arrest the said to make diligent search for such property, tables, devices or apparatus; and, after demanding entrance, to break open and enter said house or place, and any house or place wherein such gambling tables, establishment, devices or apparatus shall be kept, and to seize the aforesaid gambling tables, establishment, apparatus or devices, and deliver the same to of the , and to return this warrant with your doings thereon indorsed, to me, the said , at the in the said of , or, in case of my absence or inability to act, before the nearest or most accessible magistrate in the county of . Hereof fail not at your peril.

Witness the said , at the of , in the county aforesaid, the day of , 188 .

[*Signature.*]

By virtue of the within warrant I have seized the following:

Dated , , 188 .

No. 83.

§ 151. Warrant as to Female Under Sixteen Years, Living, etc., in House of Prostitution.

POLICE COURT, }
COUNTY OF } ss:

In the name of the people of the state of New York: To any peace officer of the county of :

Whereas, complaint has this day been made by , of the of , in the county of , on oath, before , a justice of the of , that on the day of , 188 , at the , in said county, one , a female child, of the age of years, is living, detained and kept in a house and place No. , street, in said of , for the purposes of prostitution; and whereas, in the judgment of said justice, said has just and reasonable cause to suspect that said child is so living, detained and kept as aforesaid, against the peace of the people of the state of New York, and the form of the statute in such case provided.

We, therefore, command you forthwith to enter and search said house and place, and bring said child, together with all persons occupying said house or place or in charge thereof, before the said , at the in the said of , with this warrant, and a return of your doings thereon indorsed, to be dealt with according to law Hereof fail not at your peril.

Witness, the said , at the of , in the county aforesaid, the day of , 188 .

[*Signature.*]

By virtue of the within warrant, I have arrested the within named and now have her before the magistrate by whom this warrant was issued.

Dated , , 188 .

No. 84.

§§ 151-4. Warrant of Arrest for Misdemeanor.

court, county of , ss.:

In the name of the people of the state of New York, To any peace officer in the county of ;

Information upon oath having been this day laid before me, that the crime of has been committed, and accusing thereof:

You are therefore commanded forthwith to arrest the above named and bring h before me at the court, in the of , in the county of , or in case of my absence or inability to act, before the nearest or most accessible magistrate in this county.

Dated at the of , this day of 188 .

No. 85.

§ 157. Proof of Justice's signature.

of county of ss.:

being duly sworn says, that he resides in the of , that the name of , signed to the above warrant of arrest, is the handwriting of , who is a justice of the of , in the county of by whom the above warrant was issued.

Sworn before me, this day of 188 .

No. 86.

Id. Return.

By virtue of the within warrant I have arrested the within named at in the county of and now have h before the magistrate by whom this warrant was issued, or before a magistrate in the said county of he having required me so to do.

Dated at the day of 188

[*Signature.*]

§ 156. Endorsement upon Warrant.

This warrant may be executed in the county of Monroe.

No. 87.

§ 159. Undertaking to Appear Before Magistrate Issuing Warrant Taken in the County of

County of ss:

We, of in the county of by occupation a defendant, and of in the county of by occupation a and of in the county of by occupation a sureties, acknowledge ourselves jointly and severally to owe the people of the state of New York, each the sum of hundred dollars, to be made and levied of our respective goods and chattels, lands and tenements, to the use of the said people, if default shall be made, in the condition following:

The condition of this recognizance is, that, whereas information has been made on oath, before a justice for the , that on the day of , 188 , at the , in said county, the crime of was committed, and accusing thereof. And, whereas, the said justice as aforesaid, did, on the day of, , 188 , duly issue a warrant for the arrest of said . And, whereas, the said has been duly arrested in the county of , and having required the officer making the arrest to take him before a magistrate in the said county of , he has this day been duly brought before me, the undersigned, one of the of said county of

Now, therefore, if the said shall personally be and appear before the said justice aforesaid, at the , in the aforesaid, on the day of , 188 , at o'clock in the noon, then this recognizance to be void, otherwise to remain in full force and virtue; and we, the said sureties, will pay

to the people of the state of New York the said sum of hundred dollars.

Taken, subscribed and acknowledged before me this day of , 188 .
Add justification.

[*Signature.*]

No. 88.

§ 159. Certificate of admission to bail.

I, justice of of the
of do hereby certify, that I have, this
day of 188 admitted the within named to bail for his appearance before the magistrate named in the within warrant, and taken bail from h accordingly.

[*Signature.*]

No. 89.

§ 177, Subd. 3. Information Against Person Arrested Without Warrant, for Committing a Felony.

county of , ss :
being duly sworn, deposes and says: That he is a peace officer in the aforesaid; that having reasonable cause for believing that one committed the crime of
in he arrested him without a warrant on the
day of , 188 , at said ; that the grounds of deponent for believing that said committed said crime are as follows:

Taken, subscribed and sworn to before me, this day of , 188 .

[*Signature.*]

No. 90.

§ 188-9 Statement and Questions Put to Defendant by Justice.

court of county of 188

Before Justice.

THE PEOPLE
vs.

Before Justice.

The defendant immediately on being brought before said justice was informed by said justice as follows:

You are charged with the crime of

You have the right to the aid of counsel in every stage of the proceedings, and before any further proceedings are had.

Question? Do you require counsel? If you do, you will be allowed a reasonable time to send for him, and the examination will be adjourned for that purpose.

Answer.

(appeared as counsel for the defendant, or no counsel appearing, and after waiting a reasonable time therefor, the said justice put the following questions to defendant):

Question. Do you desire an examination of this case, or do you waive examination and elect to give bail?

Answer.

[*Signature.*]

No. 91.

§ 192. Bail for Defendant's Appearance before Justice.

STATE OF NEW YORK, }
COUNTY OF } ss:
OF

THE PEOPLE
against

defendant .

An information having been laid before ,
esq., justice of the peace, charging ,
defendant , with the offense of , and he

having been brought before said justice for an examination of said charge, and the hearing thereof having been adjourned

We, *defendant*, residing at , in the of , county of , N. Y., by occupation a , and surety, residing at , in the of , county of , N. Y., by occupation a , hereby undertake that the above-named , *defendant*, shall personally appear before the said magistrate, during the said examination, or that we will pay to the People of the State of New York, the sum of dollars.

Dated at , N. Y., this day of 188 .

[*Signatures.*]

STATE OF NEW YORK, } ss.
COUNTY OF }

On this day of , A. D., 188 , before me, the subscriber, personally came and , to me personally known to be the same persons described in and who executed the above undertaking of bail, and severally acknowledged that they executed the same.

[*Signature.*]

No. 92.

COUNTY OF } ss:
OF }

surety to the foregoing undertaking of bail, being sworn, says that he is a resident of and a holder within the state of New York and county of , and is worth dollars over all the debts and liabilities which he owes or has incurred, and exclusive of property exempt by law from levy and sale under an execution.

Sworn to before me, this day of , 188 .

Justice of the Peace.

I hereby allow the foregoing undertaking of bail, and approve of the suret therein named.

Dated this day of , 188 .

[*Signature.*]

No. 93.

§ 193. Commitment.

The within named A. B., having been brought before me under this warrant, is committed for examination to the sheriff of the county of , or in the city and county of New York, to the keeper of the city prison of the city of New York.

No. 94.

§ 198. Statement of Defendant.

Question—What is your name and age?

Answer—

Question—Where were you born?

Answer—

Question—Where do you reside and how long have you resided there?

Answer—

Question—What is your business or profession?

Answer—

Question—Give any explanation you may think proper of the circumstances appearing in the testimony against you, and state any facts which you think will tend to your exculpation.

Answer—

No. 95.

§ 197.

At the close of the examination of the witnesses on the part of the people, the defendant was informed by me of h right to make a statement in relation to the charge against h as required by section 196 of the Code of Criminal Procedure, and after being so informed, he did waive h right to make the same.

[*Signature.*]

No. 96.

§ 200. Authentication.

COURT, } ss:
COUNTY OF , }

I, , a justice of the of , do hereby certify that at the close of the examination before me of the witnesses on the part of the people in the above action, I informed the defendant that it was h right to make a statement in relation to the charge against h and the nature of the charge was stated to h ; that the statement was designed to enable h if h saw fit to answer the charge and to explain the facts alleged against h ; that h was at liberty to waive making a statement, and that h waiver could not be used against h on the trial; that after being so informed h made the following statement.

Dated at the of , }
this day of 188 . }

[*Signature.*]

No. 97.

§ 201. After Statement or Waiver.

After the waiver of the defendant to make a statement, or after the defendant made a statement, the following witnesses were produced, sworn and examined, by and on behalf of the defendant.

[*Signature.*]

No. 98.

§ 204. Testimony.

THE PEOPLE
vs.

Before justice , , . 188
Arrested by
being duly sworn, deposes and says:
Question—What is your name and age?
Answer—
Question—Where do you reside?
Answer—

Question — What is your business or profession?
Answer —

COURT, }
COUNTY OF , } ss:

I, , a justice of the of , do hereby certify that the is the testimony given by , a witness sworn on the part of the , who stated his name to be , his age to be , his business or profession to be .

Dated at the of , this day of , 188 .

[*Signature.*]

No. 99.

§ 207. Indorsement to be made on depositions and statement of defendant in case of prisoner's discharge.

There being no sufficient cause to believe the within named guilty of the offense within mentioned, I order him to be discharged.

[*Signature.*]

No. 100.

§ 207. Endorsement of Discharge.

There being no sufficient cause to believe the within named A. B. guilty of the offense within mentioned, I order him to be discharged.

No. 101.

§ 208. Endorsement of Commitment.

It appearing to me by the within desposition (and statement, if any) that the crime therein mentioned [or any other crime according to the fact, stating generally the nature thereof] has been committed, and that there is sufficient cause to believe the within named A. B. guilty thereof, I order that he be held to answer the same.

No. 102.

§§ 208, 209. Indorsement to be made on depositions and statement of defendant if believed guilty.

It appearing to me by the within depositions and statement that the crime therein mentioned of has been committed, and that there is sufficient cause to believe the within named guilty thereof, I order that he be held to answer the same.

[*Signature.*]

No. 103.

§§ 208, 209 Indorsement to be made on depositions and statement of defendant if believed guilty and crime be not bailable.

It appearing to me by the within depositions and statement that the crime therein mentioned of has been committed, and that there is sufficient cause to believe the within named guilty thereof, I order that he be held to answer the same, and that he be committed to the sheriff of the county of

[*Signature.*]

No. 104.

§ 208, 210. Indorsement to be made on depositions and statement of defendant if crime be bailable and bail taken.

It appearing to me by the within depositions and statement that the crime therein mentioned of has been committed, and that there is sufficient cause to believe the within named guilty thereof, I order that he be held to answer the same and I have admitted him to bail to answer by the undertaking hereto annexed.

[*Signature.*]

No. 105.

§§ 208, 212. Indorsement to be made on depositions and statement of defendant if crime be bailable and defendant admitted to bail, but bail have not been taken.

It appearing to me by the within depositions and statement that the crime therein mentioned of has been committed, and that there is sufficient cause to believe the within named guilty thereof, I order that he be held to answer the same, and that he be admitted to bail in the sum of dollars, and be committed to the sheriff of the county of until he give such bail.

[*Signature.*]

No. 106.

§ 209. Endorsement of Commitment, Offense not Bailable.

And that he be commited to the sheriff of the county of , or in the city and county of New York, to the keeper of the city prison of the city of New York.

---

§ 210. Certificate of Bail.

And I have admitted him to bail to answer, by the undertaking hereto annexed.

No. 107.

§ 212. Order for Bail, on Commitment.

(Must be added to the endorsement mentioned in § 208.)

And that he be admitted so bail in the sum of dollars, and be committed to the sheriff of the county of , [or in the city and county of New York, to the keeper of the city prison of the city of New York,] until he give such bail.

No. 108.

§ 214. Commitment.

County of *Albany* [or as the case may be].

In the name of the people of the state of New York: To the sheriff of the county of Albany, [or in the city and county of New York, to the keeper of the city prison of the city of New York:]

An order having been this day made by me, that A. B. be held to answer to the court of upon a charge of [stating briefly the nature of the crime], you are commanded to receive him into your custody and detain him, until he be legally discharged.

Dated at *the city of Albany* [or as the case may be] this day of , 18 .

No. 109.

§ 214. Commitment where Crime is not Bailable, and where it is Bailable, but Bail is not taken.

court, county of , ss:

In the name of the people of the state of New York: To the sheriff of the county of

An order having been this day made by me that be held to answer to the court of upon a charge of , you are commanded to receive h into your custody, and detain h until he be legally discharged.

Dated at the of , this day of , 188 .

[*Signature.*]

No. 110.

§ 215. Undertaking of Witness without Sureties.

court, county of , ss:

I, , of No. street, of the , in said county, acknowledge myself to be indebted to and owe the people of the state of New York, the sum of hundred dollars, to be made and levied of my goods and chattels, lands and tenements, to the use of the said people—if default shall be made in the condition following:

The condition of this recognizance is such, that if the above bounden , shall personally appear and testify at the next court of to be held in and for the said , to give evidence as a witness on behalf of the said people against arrested and held to answer the charge of as well to the grand jury as to the petit jury, and do not depart the said court without leave; then this recognizance to be void and of no effect; otherwise to remain in full force and virtue, and the said will pay to the people of the state of New York the said sum of hundred dollars.

Taken, subscribed and acknowledged before me, this day of , 188 .

[*Signature.*]

No. 111.

§§ 215, 216. Undertaking of Witness with Sureties.

Court, county of ss:

Be it remembered, that on this day of 188 of in the county of by occupation a and of in the county of by occupation a and of in the county of by occupation a sureties, personally came before me, justice of the peace of the of , in said county, and acknowledged themselves each, jointly and severally, to be indebted to the people of the state of New York, in the sum of hundred dollars, to be made and levied of his goods and chattels, lands and tenements, to the use of the said people, if default shall be made in the condition following:

The condition of this recognizance is such that if the bounden shall personally appear and testify at the next court to be held in and for the said city or county of , to give evidence as a witness on behalf of the said people, against , arrested and held to answer the charge of , as well to the grand jury as to the petit jury, and do not depart the said court without leave, then this recognizance to be void and of no effect; otherwise to remain in

full force and virtue. The said sureties will pay to the people of the state of New York the said sum of hundred dollars.

Taken, subscribed and acknowledged the day and year first above written, before me.

[*Signature.*]

Add justification.

No. 112.

§ 216. Order that Witness give Security for Appearance.

COURT, }
OF }
THE PEOPLE
vs.

Whereas, , a witness examined before me, on the part of the people in the above action, is a material witness for the people therein; and whereas, I am satisfied by proof on oath that there is reason to believe that said will not appear and testify on the part of the people at the next court of to be held in and for the county of , to which the statements and depositions in the above action are to be sent, I do hereby order that the said enter into a written undertaking in the sum of hundred dollars, with suret that he will appear and testify on the part of the people at the next court of to be held in and for the county of .

Dated the day of , 188 .

[*Signature.*]

No. 113.

§ 218. Commitment for Neglecting to give Security for Appearance.

COURT, }
COUNTY OF } ss:

To of the said city, greeting:

Whereas, it appears by the examination of taken on oath, on the day of , 188 before me, , a justice of the peace of the of

as a witness upon a charge made on oath by the said , before me, the said justice, against . That he, the said , is a material witness against the said in regard to the said charge.

And whereas, being satisfied by due proof on oath, that there was good reason to believe that the said would not fulfill the conditions of a recognizance to appear and testify as a witness on the trial of the said unless security was required for that purpose, I, the said justice, did require the said to enter in a recognizance, with two sufficient sureties, in the sum of dollars, conditioned for the personal appearance at the next court , to be held in and for the county of , to testify and give evidence on behalf of the people against the said for the offense aforesaid: whereupon the said neglected and refused, and still doth neglect and refuse to enter into such recognizance with such sureties as aforesaid.

These are, therefore, to command you, in the name of the people of the state of New York, the said forthwith to convey and deliver into the custody of the said , the body of the said

And you, the said , are hereby required to receive the said into your custody, in the place provided by you, pursuant to the statute in such case made and provided, for the detention of witnesses who are unable to furnish security for their appearance in criminal proceedings, and h there safely keep until he shall enter into such recognizance, with such surety as aforesaid, or be otherwise discharged according to law. Hereof fail not at your peril.

Witness the said at the of and county aforesaid, the day of , 188 .

[*Signature.*]

No. 114.

§ 245. Oath of Foreman of Grand Jury.

You, as foreman of this grand jury, shall diligently inquire and true presentment make, of all such matters and things as shall be given you in charge; the counsel of the people of this state, your fellows' and your own

you shall keep secret; you shall present no person from envy, hatred or malice; nor shall you leave any one unpresented through fear, favor, affection or reward, or hope thereof; but you shall present all things truly as they come to your knowledge, according to the best of your understanding. So help you God!

No. 115.

§ 246. Oath of Grand Jurors.

The same oath which your foreman has now taken before you on his part, you and each of you shall well and truly observe on your part. So help you God!

No. 116.

§ 247. Separate Oath of Grand Jurors.

If, after the foreman and the grand jurors then present are sworn, any other grand juror appear, and be admitted as such, the oath, as prescribed in section 245, must be administered to him, commencing, "You, as one of this grand jury," and so on, to the end of section 245, supra.

No. 117.

§ 268. Indorsement of Indictment.

A true bill.
(Signed)

Foreman of the grand jury.

No. 118.

§ 276. Indictment, General.

Court of oyer and terminer of the county of [stating the proper county]; or

Court of oyer and terminer of the city and county of New York; or

Court of sessions of the county of [stating the proper county]; or

Court of general sessions of the city and county of New York; or

City court of the city of [stating the proper city].

The People of the State of New York }
against }
A. B. }

The grand jury of the [here insert the name of the county, or of the city, or of the city and county, in which the indictment is found], by this indictment, accuse A. B. of the crime of [here insert the name of the crime, if it have one, such as treason, murder, arson, manslaughter, or the like, or if it be a misdemeanor, having no general name such as libel, assault, or the like, insert a brief description of it as it is given by statute]; committed as follows:

The said A. B., on the day of eighteen hundred and , at the town [or city or village, as the case may be] of , in this county [here set forth the act charged as an offense].

A. B.,
District Attorney of the county of .

No. 119.

§ 301. Bench Warrant.

County of Albany, [or as the case may be].

In the name of the people of the state of New York:

To any peace officer in this state. An indictment having been found on the day of , eighteen hundred and , in the court of sessions of the county of Albany [or as the case may be], charging C. D. with the crime of [designating it generally].

You are therefore commanded, forthwith to arrest the above-named C. D., and bring him before that court [or if the indictment have been sent or removed to another court], before the court of oyer and terminer of that county [or as the case may be], to answer the indictment; or if the court have adjourned for the term, that you deliver him into the custody of the sheriff of the county of Albany, or as the case may be, or in the city and

county of New York, to the keeper of the city prison of the city of New York.

City [or town] of , the day of , eighteen hundred and .

By order of the court.

E. F., *Clerk*, or G. H., *District Attorney of the county of* .

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§ 303. Indorsement on Bench Warrant, Offense Bailable.

The defendant is to be admitted to bail in the sum of dollars.

No. 120.

§ 334. Pleas.

If the defendant plead guilty to the crime charged in the indictment, the defendant pleads that he is guilty.

If he plead guilty to any lesser crime than that charged in the indictment, the defendant pleads guilty to the crime of [naming it].

If he plead not guilty, the defendant pleads not guilty.

If he plead a former conviction or acquittal: the defendant pleads that he has already been convicted [or acquitted, as the case may be], of the crime charged in this indictment, by the judgment of the court of [naming it], rendered at [naming the place], on the day of .

No. 121.

§ 346. Affidavit for Removal and Stay.

COURT OF OF COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK, *against*,

City and county of , ss:

of said being duly sworn says, that he is the defendant in the above entitled criminal action. That he has been indicted by the grand jury of county for the offense of which offense is more specifically defined and is alleged to be in the indictment under the provisions of . That said indictment

was returned by the said grand jury on the day of 188 , to the court of in and for the county of ; that deponent was arraigned on said indictment on the day of 188 , and as deponent is informed by his counsel and verily believes the trial of said indictment against him has been set down for trial on the day of 188 , in said court of ; that as deponent is informed and verily believes that this action against deponent involves the decision of very important matters, as

That great popular prejudice and feeling have been aroused by *ex parte* examinations as to etc.

Deponent further says that the crime charged against him as he is advised and verily believes is a and upon conviction he could be subjected to imprisonment in a state prison for .

Deponent further says that as he is advised by his counsel who resides in the of to whom he has fully and fairly stated the case in this action, he has a good and substantial defense upon the merits, to the indictment in this action as he is advised by his said counsel after such statement made as aforesaid and as he verily believes; deponent further says that he is advised by his said counsel that this is a proper case to be presented to the court of and that his said counsel intends in good faith and on behalf of deponent to make application to the supreme court for the removal of said indictment into the court of , and therefore deponent desires that an order may be granted staying the trial herein upon said indictment until a proper application can be made for the removal of said indictment and until a decision upon said application. Deponent further says that he is advised and verily believes that such an application for removal can only be made to the supreme court, upon notice of at least ten days to the district-attorney of the county where the indictment is pending, and that therefore the first opportunity that his counsel would have to present such application would be at the special term of the supreme court which is stated to be held on the of 188 , which would be the day of 188 .

Deponent further says that no other or previous application has been made for the order desired herein.

No. 122.

§ 346. Notice to District Attorney.

COURT OF OF COUNTY:

THE PEOPLE OF THE STATE OF NEW YORK,
against,

Please take notice, that upon an affidavit of dated , 188 , hereto annexed , and the order staying the trial of the indictment herein, dated , 188 , copies of which have heretofore been served upon you and upon the indictment against the defendant herein, a motion will be made at a special term of the supreme court of the state of New York, to be held at the at the of New York, on the day of , 188 , at the opening of the court on that day, or as soon as counsel can be heard, for an order to remove the indictment presented by the grand jury to the court of of county, against the defendant from the said court of of county to the court of of county, and for such other and further relief as may be just, and the court deem proper to grant.

Dated , 188 .

Yours, &c.,

Att'y for defendant.

To , district attorney of county.

No. 123.

§ 348. Stay.

COURT OF , COUNTY OF .

THE PEOPLE, ETC.,
vs.
,

On reading and filing the affidavit of , bearing date the day of , 188 , hereto annexed, showing that an indictment for has been presented by the grand jury of county to the court of

thereof, against the above named defendant and is now pending therein, and that said defendant is about to make a motion to the supreme court at special term to have the said indictment removed from the said court of of said county, to the court of oyer and terminer of said county.

It is hereby ordered that to enable this said motion to be heard, the trial and all proceedings upon such indictment be and the same are hereby stayed until the hearing and decision of such motion, viz.: until the day of for the hearing of such motion and thereafter until decision is entered thereon.

Dated at .

No. 124.

§§ 361, 362. Certificate Denying Application to Bail.

COURT, } ss:
COUNTY OF }

I, , a justice of the of , do hereby certify that an application was made to me on the day of , 188 , for the admission to bail of , held by me to answer the crime of , and I denied the said application.

Dated at the of , this day of , 188 .

[*Signature.*]

No. 125.

§ 414. Oath of Officers.

You do solemnly swear that you shall retire with the jurors now present in court and in this trial; that you will safely keep them together until the next meeting of this court and return them thereto without delay, and that in the meantime you will suffer no person to speak to or communicate with them, nor to do so themselves, on any subject connected with this trial. So help you God.

No. 126.

§ 454. Form of Verdict. Insanity.

We find the prisoner not guilty, and acquit him upon the ground that he was laboring under such a defect of reason as not to know the nature and quality of the act he was doing [or not to know that the act was wrong.]

No. 127

§ 456. Settling Exceptions.

The foregoing bill containing the exceptions herein are hereby settled and signed by me, this day of 188 .

No. 128.

§ 477. Bench Warrant.

The bench warrant must be substantially in the following form:

County of *Albany* [or as the case may be].

In the name of the people of the state of New York—

To any sheriff, constable, marshal or policeman in this state. A. B. having been on the day of , 18 , duly convicted in the *court of sessions of the county of Albany* [or as the case may be], of the crime of, [designating it generally.]

[SEAL.]

You are therefore commanded, forthwith to arrest the above named A. B., and bring him before that court for judgment; or if the court have adjourned for the term, you are to deliver him into the custody of the sheriff of the county of *Albany*, [or as the case may be, or in the city and county of New York, to the keeper of the city prison of the city of New York.]

City of *Albany*, [or as the case may be] the day of , 18 .

By order of the court.

E. F., Clerk.

No. 129.

§ 491. Death Warrant.

The people of the state of New York to the sheriff of county, greeting:

Whereas, at a court of oyer and terminer held at in the of county of , in and for said county on the day of 18 , by and before one of the justices of the supreme court of the state of New York presiding, was convicted of the crime of murder in the first degree, in that he feloniously, wilfully, of malice aforethought, and from a deliberate and premeditated design to effect the death of , killed and murdered the said on the day of 18 , at by shooting [or as the case may be], and was thereupon sentenced by the said court of oyer and terminer to be hanged by the neck on Friday [or as the case may be] the day of 18 , between the hours of o'clock in the forenoon and o'clock in the afternoon, until he should be dead. Now, therefore we do, by this warrant, pursuant to the statute in such case made and provided, require, direct and appoint that you cause the said sentence to be executed on the day and between the hours therein mentioned, to wit [naming the day], and at the place and in the manner prescribed by law.

Given under the hand and seal of the undersigned being the justice who constituted said court of oyer and terminer on this day of 18 .

[L. S.] W. L. L., Justice of the Supreme Court.

No. 130.

§ 496. Inquiry into Sanity of Person Sentenced to Death.

STATE OF NEW YORK, } ss:
COUNTY OF . }

It appearing to me that there is reason to believe that A. B., lately convicted of murder before , at a court of oyer and terminer, held at , and who is now under sentence of death in the jail of said county, has become insane since the said conviction,

I do therefore, in pursuance of § 496 of the Code of Criminal Procedure, concur with C. D., sheriff of county, in calling a jury to make inquest whether the said A. B. be of sane mind or no. And I do hereby order and direct the said sheriff to impanel a jury of twelve persons of his county, qualified to serve as jurors in courts of record, to examine and make inquest as to sanity of said A. B.

Dated , .

E. F., Justice of the supreme court or county judge.

No. 131.

Id. Notice to District-Attorney.

To D. C. H,, esq., district-attorney:

Sir: Take notice that with the concurrence of Hon. E. F., justice of the supreme court [or county judge, as the case may be], I shall proceed to impanel a jury and make inquest to determine as to the sanity of A. B., lately convicted of murder at a court of oyer and terminer held at , , and who is now under sentence of death in the jail of county, on the day of , 18 , at o'clock, . M., at .

Dated , .

C. D., Sheriff of county.

No. 132.

Id. Oath to Jurors.

"You do each for yourself swear that you will well and truly inquire whether A. B., the prisoner now here, be of sane mind or no, and that you will true inquest make thereof, according to the evidence. So help you God."

No. 133.

Id. Where Juror is Challenged.

"You shall true answers make to such questions as shall be put to you touching the objection or challenge to you as a juror. So help you God."

No. 134.

Id. To Witness where Juror is Challenged.

"You shall true answers make to such questions as shall be put to you touching the challenge of J. K., a juror. So help you God."

No. 135.

§ 497. Subpœna by District-Attorney.

In the name of the people of the state of New York: To G. H.:

You are commanded that, laying aside all business, you be and appear at , in the , on the day of , 18 , to testify and give evidence upon an inquest then and there to be taken before C. D., sheriff of said county, to determine whether A. B., a prisoner therein confined and now under sentence of death, be insane or no, and hereof fail not at your peril.

Dated , .

D. C. H., District-Attorney, county of .

No. 136.

Id. Oath to Witness on Inquest.

"The evidence you shall give touching the sanity of A. B., the prisoner now here, shall be the truth, the whole truth, and nothing but the truth. So help you God."

No. 137.

§ 498. Inquisition as to Sanity of Prisoners.

STATE OF NEW YORK, } ss:
COUNTY OF . }

Inquisition taken before the undersigned, sheriff of county, with the concurrence and by order of Hon. T. R. W., justice of the supreme court, as to the sanity of A. B., now confined in the jail of said

county under sentence of death, at the said jail upon the oaths and affirmations of J. K., etc., twelve qualified persons of said county summoned by me to inquire as to the sanity of the said A. B.

The said jurors being each duly sworn and charged to inquire touching the sanity of said prisoner, do upon their oaths and affirmations, say that the said A, B., is not of sound mind but is of insane mind (as the case may be).

In witness whereof, we, the said sheriff, as well as the said jurors, have to this inquisition set our hands and seals at the time and place aforesaid.

C. D., Sheriff. [L. S.]

[L. S.] { G. H., I. J., } Jurors.

No. 138.

§ 500. Inquiry Into Pregnancy of Female Sentenced to Death. Notice to District-Attorney.

To D. C. H., district-attorney, county.

Sir: Take notice that in pursuance of § 500 of the Code of Criminal Procedure, it appearing to me that there is reasonable ground to believe A. B., a female convicted of murder at the court of oyer and terminer, held at, etc., and now in the jail of this county under sentence of death, is pregnant and quick with child, I shall proceed to impanel a jury of six physicians to inquire and make inquest as to her pregnancy at in the on the day of , 18 , at o'clock in the noon.

Dated ,

C. D., Sheriff of county.

No. 139.

Id. Subpœna of District-Attorney.

In the name of the people of the state of New York: To G. H.:

You are commanded that laying all business aside, you be and appear at , in the , on the

day of , 18 , at o'clock in the noon, to testify and give evidence upon an inquest then and there to be taken before C. D., sheriff of said county, to determine whether A. B., a female prisoner, now confined in the jail of said county under sentence of death, be pregnant or quick with child or no; and hereof fail not at your peril.

Dated ,

D. C. H., District-Attorney, county.

No. 140.

Id. Oath to Jurors.

You do each for yourself swear that you will well and truly inquire whether A. B., prisoner now before you, be pregnant or quick with child or no, and that you will true inquest make thereof according to the evidence. So help you God.

No. 141.

Id. Oath of Challenged Juror.

You shall true answers make to such questions as shall be put to you touching the objection or challenge to you as a juror. So help you God.

No. 142.

Id. Oath to Witness on Challenge to Juror.

You shall true answers make to such questions as shall be put to you, touching the challenge of J. K., a juror. So help you God.

No. 143.

Id. Oath to Witness on Inquest.

The evidence you shall give upon this inquest, whether A. B., the prisoner now here, be pregnant or quick with child or not, shall be the truth, the whole truth, and nothing but the truth. So help you God.

No. 144.

§ 500. Id. Inquisition as to Pregnancy.

STATE OF NEW YORK, } ss:
COUNTY OF . }

Inquisition taken before the undersigned, sheriff of county at , in said county on the day of , 18 , upon the oaths and affirmations of J. K. &c., six physicians of said county [or as the case may be], summoned by me to inquire whether A. B., a female prisoner now in the jail of said county, under sentence of death, be pregnant or quick with child or no. And the said jurors each being sworn and charged to inquire whether the said A. B. be pregnant or quick with child, and upon their oaths and affirmations say that the said A. B. is now pregnant and quick with child [or as the case may be].

In witness whereof we, the said sheriff as well as the said jurors, have to this inquisition set our hands and seals at the time and place aforesaid.

[L. S.] C. D., sheriff.

J. K., L. M., } Jurors. [L. S.]

No. 145.

§ 503. Order to bring Defendant Sentenced to Death, before the General Term or Oyer and Terminer.

SUPREME COURT:

THE PEOPLE, ETC., }
vs. }

On reading and filing the application of the attorney-general (or district-attorney) in the above entitled action, whereby it appears that the above named defendant was on the day of , 18 , at a court of oyer and terminer held in and for the county of , at in said county, before Hon. , justice of the supreme court, convicted of the crime of murder in the first degree, and was thereupon sentenced to the punishment of death, to be executed on the day of , 18 , and said sentence of death has not

been executed, although the time specified thereby has passed, and that said judgment and sentence still remain in full force, now on motion of , attorney-general of the State of New York (or , district-attorney), it is ordered, that , sheriff of county, be and he hereby is directed and commanded to bring and produce the said before our general term of the supreme court (or court of oyer and terminer) at the , on the day of , 18 , at o'clock M. to do and receive what shall then and there be considered and adjudged concerning the said

Dated

Signed, T. R. W.,
Justice Supreme Court.

No. 146.

§ 507. Invitation to Certain Officers to be Present at Execution.

Sir: Pursuant to § 507 of the Code of Criminal Procedure, you are hereby invited to be present at the execution of A. B. at the jail of said county in the of , on the day of , 188 , at o'clock, M.

C. D., Sheriff.

To Hon. D. E., County Judge, &c.

No. 147.

§ 508. Certificate of Execution.

STATE OF NEW YORK, } ss:
COUNTY OF }

I, the sheriff of the county of , and the other public officers, physicians and citizens whose names are hereto subscribed, do certify that A. B., who was sentenced by the court of oyer and terminer held in and for the county of , on the day of , 188 , to be executed on this day between the hours of o'clock in the morning and o'clock in the afternoon, was at the time mentioned, in pursuance of the said sentence executed by hanging by the neck until he was dead in

the jail of said county; and we the undersigned do certify that we witnessed the said execution, and that the same was conducted in conformity to the provisions of law and of the said sentence.

In witness whereof we have at the said jail subscribed our names hereto this day of 188 .

Signed, C. D., Sheriff,
E. F., County Judge,
G. H., Surrogate, &c.

No. 148.

§ 522-3. Notice of Appeal by Defendant.

SUPREME COURT:

THE PEOPLE, ETC.
vs.

Gentleman:

Take notice that the defendant above named appeals to the supreme court, at general term from the judgment of conviction of the crime of rendered against him, by the court of , held at , in and for the county of on the day of , 18 .

Dated , 18

Yours, etc.,

M. C., Attorney for Defendant.

To the clerk of county, and to D. C. H. district-attorney of county.

No. 149.

§ 524. Notice of Appeal by People.

SUPREME COURT:

THE PEOPLE, ETC
vs

Gentlemen:

Take notice that the people of the state of New York appeal to the supreme court at general term from the

judgment for the defendant above named on demurrer (or as the case may be) rendered by the court of , held at in and for the county of on the day of , 18 .

Dated , 18 .

D. C. H., district-attorney, county of .

To the clerk of county and to defendant, (or in case of his absence from county, M. C., his counsel.)

No. 150.

§ 527-8. Certificate for Stay on Appeal.

SUPREME COURT:

THE PEOPLE &c.
vs.
.

I, the undersigned, a justice of the supreme court of the state of New York, do hereby certify that in my opinion there is reasonable doubt whether the judgment of conviction rendered in the court of held at in and for the county of against the defendant above named for the crime of should stand.

Dated 18 .

T. R. W., Justice of Supreme Court.

No. 151.

§ 535. Notice of Argument of Appeal.

SUPREME COURT:

THE PEOPLE, ETC., Respd't.
vs.
Appl't.

To D. C. H., district-attorney:

Sir: Take notice that the appeal in this action will be brought on for argument at a general term of the supreme court to be held at in on the day of , 18 .

Yours, etc.,

M. C., Attorney for appellant.

No. 152.

§ 554. Bail by Police Officers.

We, A. B., defendant, and , residing at number , in and C. D., residing at , hereby jointly and severally undertake that the above A. B., defendant, shall appear and answer the complaint (describing it briefly) before the magistrate before whom he would be arraigned if not bailed on the day of eighteen hundred and , at o'clock, and there remain to answer, subject to any order of the magistrate, and render himself in execution thereof, or if he fail to perform either of these conditions, then he will pay to the people of the state of New York the sum of

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No. 153.

§ 560. Order of Justice as to Notice to be Served District-Attorney of Application to Bail.

COURT, OF COUNTY OF

THE PEOPLE against

An application having been this day made to me by the above named defendant for his admission to bail upon the charge of , upon which he has been held by me , and the said defendant having shown good and sufficient reasons for a notice of less than two days to the district attorney of his application for admission to bail;

I do hereby order that a notice of be served on the district attorney of county of the application of the defendant for admission to bail on said charge.

Dated Albany, , 188 .

[*Signature.*]

No. 154.

§§ 561, 562. Certificate Granting Application to Bail.

COURT, } ss:
COUNTY OF }

I, a justice of the of , do hereby certify that an application was, on the day of , 188 , made to me for the admission to bail of , held by me to answer the crime of , and I did grant the said application and fix the sum in which bail may be taken at hundred dollars, with suret

Dated at the of , this day of , 188 .

No. 155.

§ 568. Bail Before Indictment.

An order having been made on the day of , eighteen hundred and , by A. B., a justice of the peace of the town of [or as the case may be], that C. D. be held to answer upon a charge of [stating briefly the nature of the crime], upon which he has been duly admitted to bail in the sum of dollars.

We, [C. D., defendant, if the defendant join in the undertaking]; of [stating his place of residence and his occupation] and E. F., and G. H., [stating place of residence and occupation] surety or sureties [as the case may be], hereby undertake, jointly and severally, that the above-named C D. shall appear and answer the charge above mentioned, in whatever court it may be prosecuted; and shall at all times render himself amenable to the orders and process of the court; and, if convicted, shall appear for judgment, and render himself in execution thereof; or if he fail to perform either of these conditions, that we will pay to the people of the state of New York, the sum of dollars [inserting the sum in which the defendant is admitted to bail].

[*Signature.*]

No. 156.

§ 571. Notice of application for bail in cities.

To D. C. H., esq., district-attorney:

Sir: Take notice that upon the day of , 18 , at o'clock, . M., application will be made to Hon. , at his office in the of , to admit to bail , now confined in the county jail [or, as the case may be,] on a charge of , and that the following persons will be proposed as sureties, viz.: A. B. merchant, residing at , C. D. physician, residing at .

That the said A. B., is the owner of real estate in the of , known as No. street, in said valued at dollars, on which there is a mortgage of dollars, [or no incumbrance as the case may be.]

That the said C. D., is the owner of certain bonds, stock, [or other personal property, describing it] valued at dollars, and there are no judgments against him.

Dated , 18 .

M. C., Attorney for , Def't.

No. 157.

§ 572. Affidavit of Justification.

COUNTY OF } ss:
OF . }

suret

to the foregoing undertaking of bail, being sworn, says that he is a resident of and a holder within the state of New York and county of , and is worth dollars over all the debts and liabilities which he owes or has incurred, and exclusive of property exempt by law from levy and sale under an execution.

Sworn to before me, this day of , 188 . }

No. 158.

§ 575. Order Allowing or Disallowing Bail.

COURT, }
OF }
COUNTY OF }

THE PEOPLE,
vs.

I do hereby the bail given by the defendant in the above action before me, on the day of 188 .

Dated at Albany, this day of 188 .

[*Signature.*]

No. 159.

§ 576. Order for Discharge on Bail.

To the sheriff of the county of , [or, in the city and county of New York, to the keeper of the city prison of the city of New York]: A. B., who is detained by you on a commitment to answer a charge for the crime of [designating it generally], having given sufficient bail to answer the same, you are commanded forthwith to discharge him from your custody.

No. 160.

§ 581. Bail after Indictment.

An indictment having been found on the day of , eighteen hundred and , in the court of sessions of the county of Albany [or as the case may be,] charging A. B. with the crime of [designating it generally,] and he having been duly admitted to bail in the sum of dollars.

We, A. B., defendant [if the defendant join in the undertaking,] and C. D., surety or sureties, [as the case may be,] of [stating his place of residence and occupation], and E. F., of [stating his place of residence and occupation,] hereby jointly and severally, undertake that the above-named A. B. shall appear and answer the indictment above mentioned, in whatever court it may be prosecuted, and shall at all times render himself amenable to the orders and process of the court; and if convicted, shall appear for judgment, and render himself in

execution thereof; or if he fails to perform either of these conditions, that we will pay to the people of the state of New York the sum of dollars [inserting the sum in which the defendant is admitted to bail.]

No. 161.

§ 586. Certificate of Deposit Instead of Bail.

THE PEOPLE OF THE STATE OF NEW YORK
against

Whereas, heretofore and on the day of , 18 , an order was made by , admitting the above named defendant to bail, on giving an undertaking in the sum of dollars, on a certain charge [and indictment, as the case may be,] of [state offense.]

This is to certify that the said , defendant above named has deposited with me, this day, the amount of dollars, the sum mentioned in said order, as security for his appearance pursuant to such order, instead of the said undertaking of bail pursuant to § 586 of the Code of Criminal Procedure.

Dated, , 18 .

A. G., County treasurer,
county.

No. 162.

§ 590. Certificate of Surrender by Principal in Exoneration of Bail.

THE PEOPLE, &c.
vs.

I hereby certify that the defendant above named, who heretofore gave bail on his arrest on an indictment now pending against him for burglary [or as the case may be], has this day surrendered himself, in exoneration of his said bail by delivering himself into my custody together with a certified copy of the undertaking of bail so given as aforesaid.

Dated

J. A. H., Sheriff of County.

Id. Certificate of Surrender by Bail.

THE PEOPLE OF THE STATE OF NEW YORK, }
vs. }

I hereby certify and acknowledge that , a surety given for the appearance of the above named defendant on an indictment now pending against him for burglary [or as the case may be] has this day surrendered the said defendant in exoneration of him as bail, by delivering him into my custody, together with a certified copy of the undertaking of bail given by said surety, pursuant to § 590 of the Code of Criminal Procedure.

J. A. H., Sheriff of County.

Dated

No. 163.

§ 591. Deputation to Arrest Principal, by Surety, Indorsed on Copy Undertaking.

Know all men by these presents that I, of , being one of the sureties mentioned in the within copy undertaking of bail, have deputized, authorized and empowered, and by these presents do hereby deputize, authorize, and empower in my place, stead and behalf of the of , at any place within the state of New York to take, arrest, secure, and surrender to the sheriff of the county of , in the state of New York, the defendant named in the within copy undertaking in exoneration and discharge of my said undertaking as bail for said , in the cause therein mentioned, and to employ such persons and assistants as may be necessary to effect such purpose.

In witness whereof I have hereunto set my hand this day of 18 .

Signed,

Executed and delivered in the presence of

C. D.

No. 164.

§ 605. Bail after Re-arrest.

An order having been made on the day of eighteen hundred and by the court of [naming the court,] that A. B. be admitted to bail in

the sum of dollars, in an action pending in that court against him in behalf of the people of the state of New York, upon an [information, presentment, indictment, or appeal, as the case may be.]

We, A. B., defendant [if the defendant join in the undertaking,] and C. D., surety of [stating his place of residence and occupation,] and E. F., surety of [stating his place of residence and occupation,] hereby jointly and severally, undertake that the above-named A. B. shall appear in that or any other court in which his appearance may be lawfully required, upon that [information, presentment or appeal, as the case may be] and shall at all times render himself amenable to its orders and process, and appear for judgment and surrender himself in execution thereof; or if he fail to perform either of these conditions, that we will pay to the people of the state of New York the sum of dollars, [inserting the sum in which the defendant is admitted to bail.]

No. 165.

§ 608. Justice's Criminal Subpœna

In the name of the people of the state of New York:

To

You are hereby commanded to appear before the undersigned , a justice of the peace of the of , at office in said on the day of , 188 , at o'clock M., as a witness in a criminal action prosecuted by the people of the state of New York against

Dated at the of , county of , N. Y., this day of , 188 .

[*Signature.*]

No. 166.

§ 609. Subpœna — Grand Jury.

In the name of the people of the state of New York:

To

You are hereby commanded to appear before the grand jury of the county of , at the court house in the of , county of , New York, on the day of , 188 , at o'clock M.,

as a witness in a criminal action prosecuted by the people of the state of New York against
Dated at the of , county of , N. Y., this day of , 188 .

District attorney.

Or by order of the court,

Clerk.

No. 167.

Id. Proof of Service.

COURT.

THE PEOPLE
vs.

I hereby certify that I served the within subpœna upon the following *witnesses* therein named, viz.:

at , in the of county, N. Y., on the day of , 188 , by showing said subpœna to said *witnesses and to each of them*, and delivering a copy thereof to h personally.

Dated this day of , 188 .

No. 168.

§ 612. Subpœna.

In the name of the people of the state of New York: To A. B.

You are commanded to appear before *C. D., a justice of the peace of the town of* , [or "the grand jury of the county of ," or the court of sessions of the county of , or as the case may be,] at [naming the place,] on [stating the day and hour,] as a witness in a criminal action prosecuted by the people of the state of New York, against E. F.*

Dated at the town of , [as the case may be,] the day of , 18 .

"G. H., justice of the peace," [or "I, K., district attorney," or "By order of the court, L. M., clerk, as the case may be.]

No. 169.

§ 613. Subpœna duces tecum.

And you are required also, to bring with you the following, [describing intelligibly the books, papers or documents required.]

No. 170.

§§ 614-15. Return of Service of Subpœna.

county of , ss:

I do hereby certify and return that I did, on the day of 188 , at the of , N. Y., serve the within subpœna on therein named, by delivering it, or a copy hereof, or by showing it to said personally.

Dated , this day of , 188

No. 171.

§ 619. Warrant of Attachment Against Witness.

The people of the state of New York to the sheriff of the county of , greeting:

We command you that you attach , [L. S.] and bring him forthwith before our court of oyer and terminer [or court of sessions], held in and for our county of , at , to answer unto us for certain trespasses and contempts against us in not obeying our writ of subpœna, commanding him to appear on , before said our court [or in not appearing in pursuance of his recognizance] to testify on an indictment there to be tried against on the part of the people [or defendant], and you are further commanded to detain him in your custody until he shall be discharged by our said court; and have you then and there this writ.

Witness, , justice of the supreme court [or county judge] of said county, at , in in said county, the day of , 18 .

J. L., Clerk.

D. C. H., District-Attorney,
or
L. M., Attorney for defendant.

Endorsed: Allowed this day of , 18 .

T. R. W., Justice Supreme Court

No. 172.

§ 664. Compromise of Crimes. Acknowledgment of Satisfaction.

county of , ss:

I, A. B., of , do hereby acknowledge to have received of C. D., of , the sum of dollars in full satisfaction for the injury and damage done to me at the said on the day of , 18 , by the said C. D. in assaulting and beating me (or as the case may be), and for which offense I made complaint on oath on the day of , 18 , to , police justice, and which said complaint is now pending and undetermined (or an indictment having been found against the said C. D. thereon on the day of , 18 , in the court of in and for county), and I desire that no further proceeding be had thereon against the said C. D.

A. B.

Add acknowledgment.

No. 173.

Id. Order for Compromise.

Court of , county of .

THE PEOPLE OF THE STATE OF NEW YORK, vs. C. D.

On reading and filing the acknowledgment of satisfaction executed by A. B. for the injury and damage done to him by C. D., indicted for , a misdemeanor, which indictment is now pending in this court, and on motion of the defendant it is ordered that on payment of dollars, costs incurred (or otherwise, if the court so direct) that all proceedings be stayed upon the prosecution of said indictment, and the defendant discharged therefrom.

(Signed), W. L. L., Justice supreme court.

No. 174.

§ 676. Summons against corporation.

The summons must be in substantially the following form:

County of *Albany*, [or as the case may be.]

In the name of the people of the state of New York:

To the [naming the corporation.]

You are hereby summoned to appear before me, at [naming the place], on [specifying the day and hour], to answer a charge made against you, upon the *information of A. B.*, for [designating the offense, generally].

Dated at the *city* [or town] of , the day of , 18 .

G. H., Justice of the peace.
[or as the case may be].

County, ss:

being duly sworn says, that on the day of , 188 , at in the county of state of New York, he served the within summons upon president or other head of the corporation, or on the secretary, cashier or managing agent thereof, by delivering a true copy thereof to, and leaving the same personally with, said .

Subscribed and sworn to before me, this day of 188 .

Justice.

No. 175.

§§ 678, 679.

COURT, }
COUNTY OF . }

THE PEOPLE
vs.

I hereby certify that there is sufficient cause to believe the above named defendant guilty of the offense charged.

[*Signature.*]

No. 176.

§ 708. Venire—Criminal.—Special Sessions.

STATE OF NEW YORK, }
COUNTY OF } ss.
OF .

The people of the state of New York:
To any constable of the county of , greeting:

You are hereby commanded to summon *twelve* good and lawful men in the of , in said county, qualified to serve as jurors, and not exempt from such service by law, and who shall be in no wise of kin either to , the complainant, or to , the defendant, to be and appear before the undersigned, at office , in the of , in said county, on the day of , 188 , at o'clock in the noon, to make a jury for the trial of said , charged with the offense of .

And have you then and there this order, with a certified list of the persons you shall have summoned annexed to the same.

Witness my hand, at the said of , this day of , 188 .

[*Signature.*]

I hereby certify that by virtue of the within venire, I have personally summoned the following persons named below to attend as herein prescribed as jurors to try the offense mentioned within, viz:

Dated this day of , 188 .

Constable.

To , Esq.,
Justice.

No. 177.

§ 711. Oath to Jury.

You do swear [or you do solemnly affirm, as the case may be] that you will well and truly try this issue, between the people of the state of New York and A. B., the defendant, and a true verdict give, according to the evidence.

No. 178.

§ 713. Oath of Officers.

You do swear that you will keep this jury together in some private and convenient place, without food or drink, except bread and water, unless otherwise ordered by the court; that you will not permit any person to speak to or communicate with them, nor do so yourself, unless it be to ask them whether they have agreed upon a verdict; and that you will return them into court when they have so agreed, or when ordered by the court.

No. 179.

§§ 717, 718. Judgment of Court of Special Sessions.

COURT , }
CITY OR TOWN OF , COUNTY OF . }

THE PEOPLE OF THE STATE OF NEW YORK
against
} *Judgment* 188 .

The defendant was this day convicted, on a trial by the court or a jury, or on a plea of guilty of the offense of , and the court sentenced h to imprisonment in the of this county, days, and pay a fine of dollars, and be imprisoned until paid, not exceeding days.

[*Signature.*]

No. 180.

§§ 721, 722. Record of Conviction—Special Sessions. Plea of Guilty. Trial by Court.

Court, county of

THE PEOPLE OF THE STATE OF NEW YORK
against

The above named having been brought before me, , a justice of the of , charged with and having requested to be tried by a court of special sessions; and the above named having been thereupon duly convicted upon a plea of guilty.

I have adjudged that he be imprisoned in the of the of days, and pay a fine of dollars, and be imprisoned until it be paid, not exceeding days.

Dated at the of , the day of , 188 .

[*Signature.*]

No. 181.

§ 721. Record of Conviction—Special Sessions. Plea of Not Guilty.

COURT OF COUNTY OF

188 .

THE PEOPLE OF THE STATE OF NEW YORK,

vs.

The above named having been brought before me, a justice of the of , charged with and having requested to be tried by a court of special sessions; and the above named having thereupon pleaded not guilty, and demanded or failed to demand a jury trial, and having been thereupon duly tried and upon such trial duly convicted:

I have adjudged that he be imprisoned in the of the county of days and pay a fine of dollars, and be imprisoned until it be paid, not exceeding days.

Dated at the of , the day of 188

[*Signature.*]

No. 182.

§ 721. Certificate of Conviction—Plea of Guilty.

Court of special sessions or police court.

County of Albany, town of Berne, [or as the case may be.]

The People of the State of New York
against
A. B.

January 1, 18 .

The above named A. B. having been brought before C. D., justice of special sessions, justices of the peace [or other magistrate as the case may be] or police justice, of the town [or city or village] of [as the case may be] charged with [briefly designating the offense,] and having thereupon pleaded guilty or not guilty, [as the case may be] and demanded [or failed to demand, as the case may be] a jury, and having been thereupon duly tried, and upon such trial duly convicted. It is adjudged that he be imprisoned in the jail of this county,
days [or pay a fine of dollars and be imprisoned until it be paid, not exceeding days, or both as the case may be.]

Dated at the town [or city,] of , the day of , eighteen hundred and

C. D.,
Justice of the peace or police justice or other magistrate [as the case may be] of the town [or city] of [as the case may be].

No. 183.

§ 721. Warrant to Commit a Child under Sixteen Years. Plea, Not Guilty.

court, county of , ss.:

In the name of the people of the state of New York:

To any sheriff, constable, marshal, or policeman in the county of , and to the superintendent of the House of Refuge for the reformation of juvenile delinquents in the city of New York, greeting:

Whereas, on the day of , 188 , was brought before me, , a justice in and for the and county of , charged on the oath of , which oath was believed by me, the said justice, with, on this present day, at the of

And whereas the said justice, immediately and before any further proceedings were had, informed the said of the charge against him, and of his right to the aid of counsel in every stage of the proceedings, and the said charge was then and there distinctly read and stated to the said , who then and there pleaded not guilty thereto, who was then and there tried upon the said charge by the said justice, who did thereupon hear testimony on oath in support of said charge, and in defense thereof, and on behalf of said person.

And whereas the said testimony was given and evidence was had in the presence and hearing of the said , he , the said , having previously thereto been allowed a reasonable time to send for and advise with counsel.

And whereas it was ascertained by said justice, that said was years old on the day of , 188

And whereupon the said justice did thereupon adjudge and determine that the said was guilty of the aforesaid charge and offense, and the said was thereupon convicted of the charge and offense aforesaid; and it was adjudged and determined by me that the said should be committed to and confined in the House of Refuge for the reformation of juvenile delinquents, in the city of New York, until he should be thence discharged according to law.

Now, therefore, you, the said sheriff, constable, marshal or policeman, are commanded forthwith to convey and deliver the said into the custody of the said superintendent. And you, the said superintendent, are hereby commanded to receive the said into your custody, in the said House of Refuge, and there safely keep until he shall be thence discharged according to law.

Given under my hand, at the of aforesaid, this day of , 188 .

[*Signature.*]

No. 184.

§ 722. Warrant to Commit Child under the Age of Sixteen Years. Plea of Guilty.

court, county of , ss:

In the name of the people of the state of New York:

To any sheriff, constable, marshal or policeman of the county of Albany, and to the superintendent of the House of Refuge for the reformation of juvenile deliquents in the city of New York, greeting:

Whereas, on the day of , 188 , was brought before me, , a justice in and for the and county of , charged on the oath of which oath was believed by me, the said justice, with, on this present day, at the of .

And, whereas, the said justice immediately and before any further proceedings were had, informed the said of the charge against h and of h right to the aid of counsel in every stage of proceedings, and the said charge was then and there distinctly read and stated to the said and he, the said was given a reasonable time to send for and advise with counsel.

And, whereas, he, the said did then and there plead guilty to the said charge.

And, whereas, it was ascertained by said justice that said was years old on the day of 188 .

And whereupon the said justice did thereupon adjudge and determine that the said was guilty of the aforesaid charge and offense, and the said was thereupon convicted of the charge and offense aforesaid, and it was adjudged and determined by me that the said should be committed to, and confined in, the House of Refuge for the reformation of juvenile deliquents, in the city of New York, until he should be thence discharged according to law.

Now, therefore, you, the said sheriff, constable, marshal or policeman, are commanded forthwith to convey and deliver the said into the custody of the said superintendent. And you, the said superintendent, are hereby commanded to receive the said into your custody, in the said House of Refuge, and h there safely keep until he shall be thence discharged according to law.

Given under my hand, at the of aforesaid, this day of 188 .

[*Signature.*]

No. 185.

§ 734. Commitment to Special Sessions.

COURT, }
COUNTY OF , }

THE PEOPLE
vs.

The sheriff of the county of is required to receive and detain who stands charged before me for to answer the charge before a court of special sessions, to be held in the of

Dated at the of , the day of 188 .

[*Signature.*]

No. 186.

§ 738. Bail to Special Sessions.

A. B., having been duly charged before C. D., a justice of the peace in the town [or city] of , [as the case may be] with the offense of [designating the offense generally]. We undertake jointly and severally that he shall appear thereon from time to time, until judgment, at a court of special sessions in the town, or village [or city] of , [as the case may be] competent to try the case, or that we will pay to the county of [naming the county in which the court is held] the sum of dollars, [inserting the sum fixed by the magistrate].

Dated at the town [or city] of [as the case may be].

No. 187.

§ 774. Oath to Foreman of Coroner's Jury.

"You do swear that you will well and truly inquire how and in what manner and when and where, the person lying here (or whose body you have just viewed, as the case may be), came to his death (or was wounded) and who such person was and into all the circumstances attending such death (or wounding), and by whom the

same was produced; and that you will make a true inquisition thereof, according to the evidence offered to you, or arising from the investigation of the body. So help you God."

No. 188.

Id. Oath to Jurors.

The same oath which the foreman of this inquest hath on his part taken, you and each of you do now take, and shall well and truly observe and keep on your part. So help you God.

No. 189.

Id. Oath to Witness.

The evidence you shall give upon the inquest touching the death (or wounding) of , (or of the person whose body has been viewed) shall be the truth, the whole truth and nothing but the truth. So help you God.

No. 190.

§ 775. Subpœna by Coroner.

In the name of the people of the state of New York: To :

We command you and each of you, that all business and excuses being laid aside, you be and appear before the undersigned, one of the coroners of the county of at on this day of 18 , at o'clock in the noon (or forthwith), to testify upon an inquest then and there to be had upon the body of deceased, (or upon the body of a person whose name is unknown), and hereof fail not at your peril.

Witness the hand of said coroner this day of , 18 .

P. L., Coroner.

No. 191.

§ 776. Attachment by Coroner Against Witness.

The people of the state of New York to the sheriff of the county of , greeting:

We command you that you attach and bring him before the undersigned, one of the coroners of said county, at in said county, forthwith to testify upon a certain inquest (as set forth in the subpœna) and also to answer all such matters as shall be objected against him, for that he, having been duly subpœnaed to attend upon such inquest has refused or neglected to attend in conformity to such subpœna, and have you then and there this writ.

Witness the hand of the said coroner this day of , 18 .

P. L., Coroner.

No. 192.

§ 777. Coroner's Inquest.

STATE OF NEW YORK, }
COUNTY OF } ss.
OF }

At an inquest indented and taken this day of in the year of our Lord one thousand eight hundred and eighty , for the people of the state of New York, in the of , in said county, before , one of the coroners of said county, on view of the body of , then and there lying dead upon the oath of

good and lawful men of said county, who being sworn and charged to inquire how and after what manner the said came to death, do say, upon oath aforesaid, that came to death by

No. 193.

§ 778. Testimony taken by Coroners' Deposition.

county of , ss:

Examination of witnesses produced, sworn and examined on the day of 18 , before

one of the coroners of the said county and jurors, good and lawful men of the said county duly summoned and sworn by the said coroner to inquire how and in what manner, and when and where (or person unknown) came to his death (or was wounded) and who such person was, and into all the circumstances attending such death (or wounding) and to make true inquisition, according to the evidence, arising from the investigation of the body.

G. H. being produced and duly sworn and examined testifies and says that (give testimony in full).

(Signed) G. H.

Subscribed and sworn to before me, this day of , 18 . }
P. L., Coroner.

I do hereby certify that the foregoing testimony of the several witnesses appearing upon the foregoing inquest was reduced to writing by me, and that the said testimony is the whole of the testimony taken on such inquest, and that the same is correctly stated as given by the witnesses respectively.

P. L., Coroner.

No. 194.

§ 781. Coroner's Warrant.

County of Albany [or as the case may be.]

In the name of the people of the state of New York:

To any peace officer in this state:

An inquisition having been this day found by a coroner's jury, before me, stating that A. B. has come to his death by the act of C. D. by criminal means [or as the case may be, as found by the inquisition].

You are therefore commanded forthwith to arrest the above-named C. D. and take him before the nearest and most accessible magistrate in this county.

Dated at the city of Albany [or as the case may be] the day of , eighteen hundred and

E. F.,
Coroner of the county of Albany.
[or as the case may be].

No. 195.

§ 788. Coroner's Statement to Supervisors.

Statement and inventory of all moneys and other valuable things found with or upon all persons on whom inquests have been held by and before the undersigned, one of the coroners in and for the county of for and during the year commencing on the day of 18 .

Upon whom found.	Articles found.	Disposition thereof.
A. B., etc.	Enumerate property.	Delivered to county treasurer, etc.

(Signed) P. L., Coroner.

county of , ss:

P. L., one of the coroners of said county being duly sworn says that the foregoing statement and inventory is in all respects just and true to the best of his knowledge and belief, and that the moneys and other articles therein mentioned have been delivered to the treasurer of county and to the legal representative of the persons therein mentioned as therein stated.

P. L., Coroner.

Subscribed, sworn to before me , 18 .

H. R., Notary Public.

No. 196.

§ 792, Subd. 1. Information for Search Warrant.

county of , ss:

being duly sworn says: That he resides in that the following property has been stolen or embezzled from at that is the owner thereof; that said property has been stolen by and is now in his possession, or the possession of at the

of aforesaid, or is concealed in in said of ; that the facts upon which this affidavit is based are as follows:

Subscribed and sworn to before me, this day of 188 .

No. 197.

§ 792, Subd. 2. Information for Search Warrant.

county of , ss:

being duly sworn, says: That he resides in ; that the following property has been used as the means of committing a felony by at or is in the possession of at or is concealed in in ; that the facts upon which this affidavit is based are as follows:

Subscribed and sworn to before me, this day of 188 .

No. 198.

§ 797. Search Warrant.

County of Albany [or as the case may be].

In the name of the people of the state of New York:

To any peace officer in the county of Albany, [or as the case may be]: Proof by affidavit having been this day made before me, by [naming every person whose affidavit has been taken], that [stating the particular grounds of the application, according to section seven hundred and ninety-two, or if the affidavit be not "positive that there is probable cause for believing that," stating the ground of the application in the same manner].

You are therefore commanded in the day time, [or at any time of the day or night, as the case may be, according to section eight hundred and one], to make immediate search on the person of C. D., [or "in the building situated," describing it, or any other place to be searched, with reasonable particularity, as the case may be], for the following property: [describing it with rea-

sonable particularity], and if you find the same, or any part thereof, to bring it forthwith before me at [stating the place].

Dated at the city of Albany [or as the case may be], the day of , eighteen hundred

E. F.,

Justice of the peace of the city [or town] of [or as the case may be].

No. 199.

§ 803. Receipt for Property taken under a Search Warrant.

I, , a peace officer of the , have taken under a search warrant issued by , a justice of the of , from , from whom it was taken or in whose possession it was found, or from in the said of , where the property hereinafter described was found, no person being there, the following described property:

[*Signature.*]

No. 200.

§ 805. Return of Search Warrant.

I have executed the within search warrant, as I am within commanded, by making diligent search in the place designated in the said warrant for the goods therein described, but cannot find the said goods or any part thereof [or find the goods described in the inventory returned herewith and none other].

A. B., Peace officer.

No. 201.

§§ 805, 806. Inventory and Affidavits thereto of Property taken under Search Warrant.

Inventory of property taken by the undersigned, under and pursuant to the annexed warrant, made publicly and in the presence of , from whose

possession it was taken, and of , the applicant for the warrant.

Dated , , 188 .

[*Signature.*]

I, , the peace officer by whom the annexed warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant.

Taken, subscribed and sworn, to this day of , 188 .

No. 202.

§ 827-835. Requisitions.

STATE OF NEW YORK,
EXECUTIVE DEPARTMENT.

The following are the regulations adopted by the governor in reference to applications for requisitions and mandates upon requisitions:

Applications must come from district attorneys, and be by duplicate original papers, except the indictment, which may be a certified copy.

1st. The district attorney must certify that in his opinion the ends of public justice require that the criminal be brought back to the state for trial, at the public expense; that he is content that such expense be a county charge, and that he believes he has within his reach, and will be able to produce on the trial, the evidence necessary to secure conviction.

2d. He must further name the state upon whose executive the requisition is to be made, and name a proper person as agent, having no private interest in the arrest of the fugitive.

3d. If there has been any former requisition for the same person growing out of the same transactions, it must be so stated, with an explanation of the reasons for asking for a new requisition.

4th. If the criminal is known to be under arrest for any other offense, it must be so stated.

If an indictment has been found, a certified copy of the same must accompany the application.

Also there must be, by affidavit, positive proof that the criminal has fled from the state and the justice thereof, or proof of facts and circumstances warranting such conclusion, with a satisfactory explanation of delay in prosecution, or other matter calculated to excite suspicion of want of good faith in the proceeding. Also proof that the criminal has taken refuge in the state on whose executive the demand is to be made.

If known, it must appear whether the criminal is a resident of this state, or only transiently here.

Matters stated on information and belief must be stated with the source of information and belief, and mere general allegations of law and fact be avoided as far as possible.

In cases in which no indictment has been found, there must be, in addition to the proofs above mentioned, proof by affidavit, taken before a magistrate, of the facts and circumstances constituting the crime.

If the crime charged be forgery, the affidavit of the person whose name is alleged to be forged must be produced, or a satisfactory reason given for its absence.

In all cases the official character of the officer taking the affidavits must be duly certified.

District attorneys will be held to the strictest responsibility to see that this process is not used for the purpose of collecting debts, or for other private purposes, especially in false pretense, embezzlement and forgery cases.

If it is discovered that this process is being abused, or has been inadvertently granted, there will be no hesitation in revoking it.

Requisitions will be mailed directly to the governors upon whom made, unless there be very special reasons for doing otherwise. The agent's authority will be sent to the district attorney for delivery, who must see to it that the agent makes return of it, within a reasonable time, to the executive department, with a statement of the manner in which his duty has been discharged.

Mandates upon requisitions from other states will not be issued unless the requisition is supported by proofs conforming substantially, in material matters, as to the statements about the crime, and the manner of the criminal's departure from the state, and the good faith of the prosecution to the requirements of the foregoing regulations in similar cases.

Mandates will be mailed directly to the sheriff of the county where the criminal is supposed to be. He will be directed in all cases to allow the man arrested a reasonable opportunity to assert, before delivery, any legal rights he may have in the premises.

No. 203.

§ 840. Bastardy, Application in, by overseers.

county, ss:

To , Esq., justice of the peace of the county of :

, being pregnant with child, which is likely to be born a bastard, or having been delivered of a bastard child, and become chargeable to said county [or town or city, as the case may be], the undersigned, pursuant to section 840 of the Code of Criminal Procedure of the state of New York, applies to you to make inquiry into the facts and circumstances of the case.

Given under my hand, at the of, this day of , 18 .

, Overseer of the poor.

No. 204.

§ 841. Bastardy, Affidavit of pregnancy.

county, ss:

The voluntary examination of of , in the of , taken in writing, upon oath before , one of the justices of the peace of the , who saith she is now with child, and has been so for about months last past, and that the said child is likely to be born a bastard, and to be chargeable to the said town of ; that she is, and has for one year past been, an unmarried woman [or , her husband has continued absent out of this state for one whole year previous to such birth, separate from her and leaving her during that time continuing and residing in this state; and that such child was begotten and will be born during such absence and separation; or that such child was begotten and will be born during the separation of its mother from her husband, pursuant to a decree of a court of competent

authority], and that hath gotten her with child of the said bastard child.

Taken upon oath before me this day of , 18 .
, Justice of the Peace.

No. 205.

§ 841. Warrant Against Reputed Father prior to Birth of Child.

county, ss:

To any peace officer of said county, greeting:

Whereas, upon the application of , overseer of the poor of said , in said county, to me, , one of the justices of the peace of the said county of , I have ascertained by the examination, on oath of , that she is now pregnant of a child, likely to be born a bastard, and to be chargeable to the said county, and [recite examination] is the reputed father of such child; these are, therefore, to command you forthwith to apprehend the said , and bring him before me, at my office, in the town of , in said county of , for the purpose of having an adjudication respecting the filiation of such child, likely to be born a bastard.

Given under my hand this day of , 18 .
, Justice of the peace.

No. 206.

§ 841. Bastardy. Affidavit of Mother after Birth of Child.

county, ss:

The voluntary examination of , of , in the of , taken on oath before me, , one of the justices of the peace of the of , who saith, that on the day of , in the year of our Lord one thousand eight hundred and , at the of , she was delivered of a male bastard child, and that the said child is likely to be chargeable to the county of , aforesaid, and that hath gotten her with child of the said bastard child.

Taken upon oath before me, this day of , 18 .
, Justice of the peace.

No. 207.

§ 841. Warrant Against the Father after Birth of Child.

county, ss:

To any peace officer of the county of , and to all and every one of them, greeting:

Whereas, , of the said of , a woman, hath, in her examination, taken this day of , 18 , in writing upon oath before me, , one of the justices of the peace of the said of , declared on the day of , 18 , at the said of , she was delivered of a male bastard child, and that said child now is, and is likely to continue to be, chargeable to said of , and that is the father of the said bastard child.

And whereas, application hath been made to me by , overseer of the poor of the town of in said county, to make inquiry into the facts and circumstances of the case; and having, upon such inquiry, ascertained that said is the reputed father of such child so born a bastard;

These are, therefore, in the name of the people of the state of New York, to command and authorize you, immediately, to apprehend the said , and forthwith to bring him before me, the undersigned justice of the peace, at the said of , for the purpose of having an adjudication respecting the filiation of such bastard child.

Given under my hand, this day of , 18 .

, Justice of the peace.

No. 208.

§ 843. Indorsement to be made by Justice upon the Warrant when Reputed Father Resides in, or is in, Another County.

County of , ss:

I, the within named justice of the peace of the said county, hereby direct that the penal sum which any bond shall be taken of the within named , shall be dollars.

Dated at , this day of , 18 .

, Justice of the peace.

No. 209.

§ 843. Indorsement to be made by the Justice in the County where Warrant is to be Executed.

County of , ss:

The within warrant, with the indorsement made thereon by the justice of the peace by whom it was issued, of the sum required to be put in the bond, having been presented to me, a justice of the peace of and residing in said county of , and due proof under oath having been made to me by the oath of , of the signature of the said justice who issued the said warrant, authority is by me hereby given to arrest the within named , in the said county of .

Dated at , the day of , 18 .

, Justice of the peace.

No. 210.

§ 844. Bastardy—Putative Father's Bond on Arrest in Another County.

Know all men by these presents:

That we, C. D., and R. F., of , in the county of , are held and firmly bound, jointly and severally, unto the people of the state of New York, in the sum of dollars, for the payment whereof to the said people we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this day of , 18 .*

Whereas, the said E. D., has this day been brought before the undersigned, one of the justices' of the peace of the county of , by virtue of a warrant issued by G. H., one of the justices of the peace of the said county of , whereon the name of the said justice [or, of O. M., one of the justices of the peace of the said county of] is indorsed, with an authority to arrest the said C. D., in the said county of ; in which warrant it is recited that E. B., of , in said county of , upon her examination, on oath, before the said G H., justice, did declare herself pregnant af a child, which is likely to be born a bastard, and to become chargeable [or did declare that she was, on the day of , at aforesaid,

delivered of a bastard child, which is chargeable to said town [or county]; and upon the said warrant is indorsed the direction of the said G. H., that the penal sum in which any bond should be taken, of the said C. P., should be $; now, therefore, if the said C. D., etc., [insert one of the conditions expressed in § 844], then the above obligation to be void, otherwise of force.

Sealed and delivered in presence of, }
and the surity approved by me, }

{ C. D., [L. S.] }
{ R. E., [L. S.] }
M. B., Justice.

No. 211.

§ 849. Bastardy; Bond on Adjournment.

Know all men (etc., as in down to the * and) the condition of this obligation is such that, whereas, the undersigned, C. D., has this day been brought before , charged upon the oath of aforesaid as the reputed father of a bastard child, with which the said alleges she is pregnant (or of a bastard child lately born of the said); and whereas, at the request of the said , and for sufficient reasons the said determined to adjourn the examination and adjudication respecting such charge, upon the execution of this bond, until the day of , at . M., in ; now, therefore, if the said C. D. shall personally appear before the said , at the time and place last aforesaid, and not depart therefrom without leave, then this obligation is to be void, otherwise of force.

Sealed, etc.

[L. S.]
[L. S.]

No. 212.

§ 850. Order of Filiation.

court, county of ss:

Whereas, the undersigned, being of said county, having upon the application of , overseer of the poor of the town of in said county, this day associ-

ated for the purpose of making an examination touching a bastard child lately born in said town of the body of C. D. (or as the case may be) and chargeable (or likely to be chargeable) to said town of , and of which child the said C. D. is alleged to be the father; and whereas, we have duly examined the said C. E. on oath, in presence of the said C. E., in respect to such charge, and heard the testimony offered in relation thereto, whereby it appears that the said C. E. was on the day of , delivered of a bastard child (or as the case may be) and which is chargeable (or likely to become chargeable) to the said town of , and that said C. D. is the father of said child, we do, therefore, adjudge him the said C. D. to be the father of said bastard child, and order that he pay to the overseer of the poor of said town, for the support of said child, the weekly sum of , so long as the said child shall continue chargeable to said town; and inasmuch as it appears to us, and we find that the said C. E. is in indigent circumstances, we determine that the said C. D. pay to the said overseer of the poor, for the support of said C. E. during the confinement and recovery, the sum of . And we hereby certify that the reasonable cost of arresting the said C. D. and of this order of filiation is the sum of .

Given under our hands, at the town of , this day of , 188 .

} Justices.

No. 213.

§ 851. Bond after Order of Filiation.

Know all men (etc. as in down to the * and), the condition of this obligation is such that, whereas by an order this day duly made and subscribed by justice of the peace of the county of , it is adjudged that C. D. is the father of a bastard child of which C. E. is pregnant, [or as the case may be] which is likely to become [or is] chargeable to said town of ; and it was thereupon ordered by the said justice that [recite the order of filiation]. Now therefore, if the said C. D. shall pay the sums for the support of the said bastard

child and the sustenance of its mother, as ordered by said justice as aforesaid, or shall be at any time hereafter ordered by the court of sessions of the county of , and shall fully and amply indemnify the said town of , and every other town, city or county which may have been or may be put to expense for the support of the said bastard or of the said mother during her confinement and recovery, in all not exceeding the sum of hereby fixed and determined upon by the said justices, then this obligation to be void; otherwise of force.

Sealed, etc. [L. S.] [L. S.]

No. 214.

§ 851. Bond on Appeal from Order of Filiation.

Know all men (as in down to the * and). Now therefore if the said C. D. shall personally appear at the next court of sessions of the county of , to answer the charge aforesaid and obey its order thereon and not depart said court without leave, then this obligation to be void; otherwise that we will pay the sum of $ fixed and determined upon by the said justices as a full indemnity for supporting the said bastard and its mother.

Sealed, etc. [L. S.] [L. S.]

No. 215.

§ 852. Commitment.

Court, }
County of . }

The people of the state of New York:

To any peace officer of county, and to the keeper of the county jail of said county, greeting:

Whereas, by an order made the day of , 18 , by and , two of the justices of the peace of the of , C. D. is adjudged to be the father of a bastard child born of the body of C. E. (or with which she is now pregnant), and chargeable (or likely to become chargeable) to the said town of , which said

order was duly made after due examination upon application by , overseer of the poor of the of

And whereas, by said order the said C. D. was further directed to pay to the overseer of the poor of the sum of $ weekly and every week for the support of said bastard child for and during so long a time as said child shall so be and remain chargeable, and also the sum of $ directed to be paid by the said C. D. for the support of the said C. E. during her confinement and recovery, she being found to be an indigent person; and in and by said order determination fixing the costs of apprehending the said C. D., and of such order of filiation at the sum of $; and whereas the said C. D. was present at the making of such order and determination, and which together with all other proceedings was by said justices reduced to writing and subscribed by them; and was required by them to pay the said costs and enter into an undertaking, with sufficient sureties to be approved by them, for the performance of such order, or his appearance at the next court of sessions of said county of , to answer the charge and obey its order therein, according to section 851 of the Code of Criminal Procedure of the state of New York.

And whereas, the said C. D. has neglected to pay said costs and to enter into such bond as aforesaid:

These are, therefore, to command you, the said peace officer, to take the said C. D. and convey and deliver him to the keeper of the common jail of the county of . And you, the said keeper, are hereby commanded to receive the said C. D. into your custody in said jail, and there safely keep him until he shall pay the said costs and execute such bond aforesaid, or he be discharged by the court of sessions of said county.

Given under our hands at the of the day of .

Signature.

No. 216.

§ 855. Order of Filiation in the Absence of the Reputed Father, Apprehended in Another County.

County of , ss:

C. D., having been apprehended in the county of

, in the state of New York, by virtue of a warrant and the direction thereon indorsed, of which the following are the copies, to wit: [insert copies] was carried before M. B., Esq., a justice of the peace of the said county of , who took from him, the said C. D., a bond to the people of the state of New York, with good and sufficient sureties, in the sum directed in the indorsement on said warrant, conditioned that the said C. D. shall appear at the next court of sessions to be holden in the county of , and not depart the said court without its leave; and the said bond having been in due form of law returned to the undersigned G. H., the justice who issued the said warrant, he thereupon immediately called to his aid the undersigned S. T., another justice of the same county, and the said justice proceeded to make examination of the matter, on the day of 18 , at , in said town, and then and there heard the proofs that were offered in relation thereto; by which it was proven that the said E. B., being in the said town of , has been delivered of a bastard child, etc., in said town [or, that the said E. B. is now pregnant of a child, which, when born, will be a bastard], and which is chargeable [or, likely to become chargeable], to said town [or county], and that C. D. is the father of said child.

We do, therefore, adjudge him, the said C. D., to be the father of the said bastard child; and, further, we do hereby order that the said C. D. pay to the overseer of the poor of the said town of , [or, to the superintendent of the poor of said county], for the support of said child, the weekly sum of one dollar, so long as the said child shall continue chargeable to said town [or county; and inasmuch as it appears to us, and we find, that the said E. B. is in

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No. 217.

§ 856. Warrant to Commit Mother Who Refuses to Disclose the Name of the Father.

County of , ss:

To any peace officer of said county, greeting:

Whereas we, the undersigned, justices of the peace of said county, are now associated for the purpose of

examining into the matter, and making order for the indemnity of the town of , in said county [or for the indemnity of the said county], against the support of a certain child, said to have been born a bastard, of the body of E. B., and chargeable [or likely to become chargeable] to said town [or county] upon the application of E. F., overseer of the poor of said town [or a superintendent of the poor of said county], have required the said E. B., who is now before us, to submit to an examination on oath, in the presence of C. D., who has been brought before us, charged with being the father of said child, to testify touching such charge, and to disclose the name of such father, but the said E. B. wholly refuses to testify and disclose; and inasmuch as it now appears to us, upon due proof thereof, given on oath before us, that more than a month has elapsed since the said E. B. was delivered of said child, and that she is now sufficiently recovered from confinement. You are, therefore, hereby commanded, in the name of the people of the state of New York, to take the said E. B., and convey her to the common jail of said county, the keeper whereof is required to detain the said E. B. in his custody in said jail until she shall so testify and disclose the name of such father.

Given under our hands at , this day of , 18 .

} Justices.

No. 218.

§ 856. Process to Compel Attendance of Mother before Justices.

County of , ss:

To any peace officer of said county, greeting:

Whereas we, the undernamed justices of the peace of said county, have, upon the application of the overseer of the poor of the town of , in said county [or the superintendent of the poor of said county], associated for the purpose of examining into the matter of a certain complaint made to us by said overseer [or superintendent], that E. B., of said town, is now pregnant with a child, which, when born, will be a bastard, and which is

likely to become chargeable to said town [or county; or that E. B. has been delivered in said town of a bastard child, which is chargeable, or likely to become chargeable to said town or county]; and C. D. having been brought before us this day, charged to be the putative father of said child: Now, therefore, to the intent that the said E. B. may be examined before us, on oath, and in the presence of the said C. D., touching the father of said child, you are hereby commanded, in the name of the people of the state of New York, to bring the said E. B. forthwith, before us, at the office of the undersigned G. H., in , aforesaid.

Given under our hands at , this day of , 18 .

G. H., }
S. T., } Justices.

No. 219.

§ 857. Summons where Mother has Property in her own right.

county of , ss:

To any peace officer of said county, greeting:

You are hereby required to summon E. B., of the town of in said county, to appear before us, the undersigned, justices of the peace of said county, on the day of , instant or two o'clock in the afternoon, at the office of the undersigned, G. H., to show cause, if any she may have, why we should not make an order for the keeping of a bastard child, said to have been lately born of said E. B., and chargeable (or likely to become chargeable) to said county (or town), by charging the said E. B., with the payment of money weekly, or other sustentation; E. F., overseer of the poor of said town (or superintendent of the poor of said county), having applied to us for that purpose.

Given under our hands, at this day of , 18 . }

G. H., }
S. T. } Justices of the Peace.

No. 220.

§ 857. Support of Child — Order to Compel the Mother to pay for the.

county of , ss :

Whereas, E. F., one of the superintendents of the poor of said county (or, overseer of the poor of the town of , in said county), has made application to us, two of the justices of the peace of said county, complaining that E. B., of , in said county, was lately delivered, at aforesaid, of a bastard child, which is chargeable (or likely to become chargeable), to said county (or town); and that said E. B. is possessed of property in her own right, and is of sufficient ability to support said child, and desiring that we should examine into the matter, and make order for the indemnity of said county (or town), and whereas, upon examination into the matter of said application, and upon due proof thereof, on oath before us given, and the said E. B., although present at such examination, not showing any sufficient cause to the contrary (or, and the said E. B., neglecting to appear before us and show cause, if any she might have, to the contrary, although duly summoned so to appear), we do, therefore, hereby order that the said E. B., pay weekly to said superintendent (or to said overseer), the sum of , for the support of said child [if necessary, insert here, unless the said E. B., shall nurse and take care of said child herself].

Given under our hands, at , this day of , 18 .

G. H., S. T. } Justices.

No. 221.

§ 858. Warrant to Commit Mother for not Executing Bond.

County of , ss:

To any peace officer of said county, greeting:

Whereas, by an order, duly made by us, the undersigned, justices of the peace of said county, bearing date the day of , instant, in relation to the keeping of a certain bastard child lately born in said

county, of the body of E. B., which is chargeable to the town of , [or, said county], we directed, etc., [as in the order], which order was so made upon the application of E. F., overseer of the poor of said town [or, a superintendent of the poor of said county], and after due notice to the said E. B., to show cause, if any she might have, against the making of such order; and, whereas, a copy of said order, subscribed by us, has been served upon the said E. B., and she has neither executed the bond by law required for her appearance at the next court of sessions, etc., nor complied with the requirements of said order. You are, therefore, hereby commanded, in the name of the people of the state of New York, to take the said E. B., and convey her to the common jail of said county, there to remain, without bail, until she shall comply with said order, or execute the bond authorized by statute as aforesaid.

Given under our hands, at this day of , 18 .

G. H., } Justices.
S. T., }

No. 222.

§ 859. Order Reducing Sum to be Paid by Father or Mother.

County of , ss:

To the overseer of the poor of the town of , in said county, [or, the superintendent of the poor of said county]:

Whereas, by an order of filiation by us made, bearing date on day of last, we did determine that C. D., is the father of a certain bastard child, then lately born in aforesaid, and did therein order, among other things, that the said C. D., should pay to you, the said overseer [or, superintendent], for the support of said child, the weekly sum of one dollar, so long as said child should continue chargeable to said town [or, county.] And, whereas, upon the application of the said C. D., we have this day inquired into the circumstances of the case, and heard the proofs and allegations to us submitted in relation thereto; and it appear-

ing to us, upon such inquiry, that the circumstances in relation to said bastard child render it proper and expedient that the sum required to be paid by the said C. D., by our former order, should be reduced, as hereinafter expressed. And, inasmuch as you, the said overseer [or, superintendent], have shown before us no sufficient reason against such reduction, although appearing before us [or, notified to appear before us and show cause, if any you might have], we do, therefore, reduce the sum required to be paid by the said C. D., by our former order as aforesaid, to the weekly sum of .

Given under our hands, this day of , 18 .

G. H., } Justices.
S. T., }

No. 223.

§ 859. Notice by Superintendent or Overseer, that Application will be made to the Court of Sessions to Increase the Amount Payable in the Order of Filiation.

To C. D.: You will take notice, that I shall make application to the next court of sessions of the county of , to be holden at , in said county, on the day of , at ten o'clock in the forenoon, to increase the sum directed to be paid by the order of filiation, of which the annexed is a copy, for the support of the bastard child therein named: which said application will be founded on the affidavits, copies of which are also annexed.

Dated at , this day of , 18 .

L. M., Superintendent of the poor.

No. 224.

§ 859. Notice to be given to Superintendent or Overseer for Reducing Amount in Order of Filiation.

To L. M., superintendent (or overseer of the poor):

You are hereby notified that I shall make application to the next court of sessions of the county of ,

to be holden at , in said county, on the day of , 18 , at ten o'clock in the forenoon, to reduce amount directed to be paid by the order of filiation, of which the annexed is a copy, for the support of a bastard child therein named; which said application will be founded on the affidavits, copies of which are also annexed.

Dated at , this day of , 18 .

L. M., Superintendent of the poor.

No. 225.

§ 860. Warrant to Seize the Property of Absconding Father or Mother.

County of , ss:

To the overseer of the poor of the town of , in said county [or, to the superintendent of the poor of said county]:

It appearing to us, two of the justices of the peace of said county, as well by the representation and application to us made by the said overseer [or the said superintendent], as upon due proof of the facts before us given, that C D. is the father of a bastard child whereof E. B., of said town, is now pregnant, and which, when born, is likely to become chargeable to said town [or county, or that C. D. is the father of a bastard child lately born in said town, of E. B., and which is chargeable or likely to become chargeable to said town or county], and that said C. D. has absconded from said town, which is the place of his ordinary residence, leaving in said county some estate, real or personal:

We, therefore, authorize you, the said overseer of the poor, to take and seize the goods, chattels, effects, things in action, and the lands and tenements of said A. B., wherever the same may be found in said county; and you will, immediately upon such seizure, make an inventory of the property by you taken, and return the same, together with your proceedings, to the next court of sessions of said county.

Given under our hands, in the town of , this day of , 18 .

C. D., }
E. F., } Justices.

No. 226.

§ 862. Notice of Appeal from Order of Filiation.

County of , ss:

To G. H. and S. T., Esqs., justices of the peace of said county:

You will take notice that the undersigned, conceiving himself aggrieved by the order made by you, of which a copy is annexed, hereby appeals therefrom to the next court of sessions to be holden in said county.

Dated at , this day of , 18 .

C. D.

No. 227.

§ 887, Subd. 1. Complaint against Vagrant.

COURT, }
COUNTY OF . } ss:

, of the said of , being duly sworn, makes complaint and says, that , who is now in said of , is a person who, not having visible means to maintain himself, lives without employment, in that he

Subscribed and sworn to before me, }
this day of , 188 . }

No. 228.

§ 887, Subd. 1. Warrant for Vagrancy.

COURT, }
COUNTY OF . } ss:

In the name of the people of the state of New York:

To any peace officer in the county of :

Whereas, complaint has this day been made by , of the of , in the county of , on oath, before , a justice of the said , that on the day of , 188 , at the said of , in said county, , was and is a person who not having visible means to maintain himself, lives without employment

against the peace of the people of the state of New York and the form of the statute in such case provided;

We therefore command you forthwith to take the body of the said , and bring him before the said , at the , in the said of , for examination with this warrant, and a return of your doings thereon endorsed, to be dealt with according to law. Hereof fail not at your peril.

Witness, the said , at the of , in the county aforesaid, the day of , 188 .

[*Signature.*]

By virtue of the within warrant, I have arrested the within named , and now have him before the magistrate by whom this warrant was issued.

188 .

Policeman.

No. 229.

§ 888. Information as to Truant Child.

COURT, } ss:
COUNTY OF , }

being duly sworn deposes and says, that he is a in the aforesaid, that on the day of 188 one a child, between the age of five and fourteen years, having sufficient bodily health and mental capacity to attend the public schools, was found by him wandering in street of said of , a truant without any lawful occupation.

Subscribed and sworn to before me, this day of 188 .

[*Signature.*]

No. 230.

§ 888. Summons to Parent, etc., to Attend Examination of Truant Child.

COURT, } ss:
COUNTY OF }

In the name of the people of the state of New York:

To , parent, guardian or master of

Whereas, complaint and information on oath has been duly made by , of the , in the county

of , before me, , a justice of the that on the day of , 188 , said who is a child between the age of five and fourteen years, having sufficient bodily health and mental capacity to attend the public schools, was found wandering in the streets of the of aforesaid, a truant without any lawful occupation, and said has been duly arrested and is now in custody on said charge, and is to be examined thereon before the said , at the , in the of , on the day of , 188 . You are hereby summoned and required to attend said examination at the time and place aforesaid.

Witness the said , at the of , the day of , 188 .

[*Signature.*]

Endorse return.

No. 231.

§ 888. Undertaking of Parent, Master or Guardian of Truant Child.

COURT, }
COUNTY OF . }

Whereas, complaint having been duly made before a justice of the , in the county of and state of New York, that residing in in the of in the county of and state of New York, a child of the age of years having sufficient bodily health and mental capacity to attend the public schools, was on the day of 188 found wandering in the streets of the said of , a truant, without any lawful occupation. And, whereas, the said justice, on such complaint being made, did duly cause a peace officer to bring such child before him for examination, and did duly cause the parent, guardian or master of such child to be summoned to attend such examination. And, whereas, such examination was, on the day of 188 duly had before said justice, and said complaint satisfactorily established. And, whereas, on the establishment of said complaint, said justice did require the said parent, guardian or mas-

ter of said child to enter into an engagement, in writing, with suret in the sum of hundred dollars, to the of that he will restrain such child from so wandering about as aforesaid; will keep h in h own premises, or in some lawful occupation, and will cause h to be sent to some school at least four months in each year until he becomes fourteen years old.

Now, therefore, we, the said parent, guardian or master, residing in county of by occupation a and residing in county of by occupation a and residing in county of by occupation a sureties, hereby jointly and severally undertake that the said will restrain said child from wandering about the streets of said of , a truant, without lawful occupation; will keep h in h own premises or in some lawful occupation, and will cause h to be sent to some school at least four months in each year until he becomes fourteen years old; or if he fail to perform either of those conditions, we, the said sureties, will pay to the of the sum of hundred dollars.

Dated at day of 188 .

[*Add acknowledgment and justification.*]

No. 232.

§ 888. Engagement of Parent, Master or Guardian of Truant Child.

COURT, }
OF , COUNTY OF }

THE PEOPLE
vs.

Whereas, the above named , residing in the county of and state of New York, a child of the age of years, having sufficient bodily health and mental capacity to attend the public schools, was, on the day of , 188 , found wandering in the streets and lanes of of , a truant, without any lawful occupation.

And, whereas, complaint was duly made to , a justice of the of , against said child, therefor,

And, whereas, said justice did cause a peace officer to bring such child before him for examination on said complaint, and did cause , the parent, guardian or master of said child to be summoned to attend such examination.

And, whereas, on such examination the said complaint was satisfactorily established, and the said justice did require the said parent, guardian or master of said child to enter into an engagement, in writing, to the of , that he will restrain said child from so wandering about as aforesaid; will keep h in h own premises or in some lawful occupation, and will cause h to be sent to some school at least four months in each year, until he becomes fourteen years old.

Now, this agreement and engagement witnesseth: That the said , the parent, guardian or master of said child, hereby covenants, promises and agrees to and with the said of , that he will restrain said child from so wandering about as aforesaid; and will keep h in his own premises and in some lawful occupation, and will cause h to be sent to some school at least four months in each year, until he becomes fourteen years old.

In witness whereof, I have hereunto set my hand and seal this day of , 188 .

Sealed and delivered in presence of

[L. S.]

[*Signature.*]

No. 233.

§ 888. Warrant of Arrest of Truant Child.

COURT, } ss:
COUNTY OF }

In the name of the people of the state of New York: To any peace officer of the county of , greeting:

Whereas, information on oath has this day been duly made by of the in the county of , before me, , a justice of the said

, that on the day of , 188 , at , in said county, one a child between the age of five and fourteen years, having sufficient bodily health and mental capacity to attend the public schools, was found wandering in the of the of aforesaid, a truant, without any lawful occupation.

You are, therefore, commanded and required, forthwith to apprehend and take the body of the said and bring him before the said , at in the said with this warrant and a return of your doings thereon indorsed, for examination, and to answer the said complaint, and to be dealt with according to law. Hereof fail not at your peril.

Witness, the said , at the , in the county aforesaid, the day of 188 .

[*Signature.*]

No. 234.

§ 888. Warrant to Commit Truant Child Having Parent, Guardian or Master. Plea, Not Guilty.

COURT, } ss:
COUNTY OF , }

In the name of the people of the state of New York:

To any sheriff, constable, marshal or policeman of the county of , and to the superintendent and principal keeper of the alms-house of the said county, greeting:

Whereas, on the day of 188 was brought before me, , a justice of the peace in and for the and county of , charged on the oath of which oath was believed by me, the said justice, with being a vagrant, within the intent and meaning of the statute and subdivision 8 of section 887 of the Code of Criminal Procedure, in that he is a child of the age of years, having sufficient bodily health and mental capacity to attend the public schools, and was, on the day of , 188 , found wandering in the streets in said of , a truant, without any lawful occupation.

And, whereas, said on being brought before said justice, was immediately informed

by said justice of said charge against h and of h right to the aid of counsel in every stage of the proceedings, and before any further proceedings were had.

And, whereas, the parent, guardian or master of said was duly summoned to attend the examination of said on said charge.

And, whereas, the said charge was then and there distinctly read and stated to the said who then and there pleaded not guilty thereto, who was then and there tried upon the said charge by the said justice, who did thereupon hear testimony on oath in support of said charge, and in defense thereof, and on behalf of said person.

And, whereas, the said testimony was given and evidence was had in the presence and hearing of the said and said parent, guardian or master, he the said having previously thereto been allowed a reasonable time to send for and advise with counsel.

And, whereupon, the said justice did thereupon adjudge and determine that the said was guilty of the aforesaid charge, and the said was thereupon convicted of the offense aforesaid, to wit, of being a vagrant, in that he said is a child of the age of years, having sufficient bodily health and mental capacity to attend the public schools, was on the day of , 188 , found wandering in the streets of said of , a truant, without any lawful occupation.

And, whereas, after the said complaint was satisfactorily established, the said justice did require the said parent, guardian or master to enter into an engagement in writing to the of , that he would restrain said child from so wandering about; would keep h in h own premises or in some lawful occupation, and would cause h to be sent to some school at least four months in each year, until h becomes fourteen years old; and the said parent, guardian or master, having refused or neglected within a reasonable time so to do, it was adjudged and determined by me that the said should be

committed to the alms-house of said county, there being no other place provided for h reception.

Now, therefore, you the said sheriff, constable, marshal or policeman, are commanded forthwith to convey and deliver the said into the custody of the said superintendent and principal keeper of the said alms-house. And you, the said superintendent and principal keeper, are hereby commanded to receive the said into your custody, in the said alms-house, and there safely keep h until he shall be discharged according to law.

Given under my hand, at the of aforesaid, this day of 188

[*Signature.*]

No. 235.

§ 888. Warrant to Commit a Truant Child, having Parents, Guardian or Master. Plea of Guilty.

COURT, } ss:
COUNTY OF , }

In the name of the people of the state of New York:

To any sheriff, constable, marshal or policeman of the county of , and to the superintendent and principal keeper of the alms-house of the said county, greeting:

Whereas, on the day of , 188 , was brought before me, , a justice of the peace in and for the and county of , charged on the oath of which oath was believed by me, with being a vagrant within the intent and meaning of the statute and subdivision eight of section 887 of the Code of Criminal Procedure, in that he is a child of the age of years, having sufficient bodily health and mental capacity to attend the public schools, and was on the day of , 188 , found wandering in the streets in said of , a truant without any lawful occupation.

And, whereas, the said on being brought before said justice, was immediately informed by said justice of said charge against h and of h right to the aid of counsel in every stage of the proceedings, and before any further proceedings were had.

And, whereas, , the parent, guardian or

master of said child was duly summoned to attend the examination of said child on said charge.

And, whereas, the said charge was then and there distinctly read and stated to the said and h the said having been given a reasonable time to send for and advise with counsel, did then and there plead guilty to the said charge in the presence of and before said justice, and of h said parent, guardian or master.

And whereupon the said justice did thereupon adjudge and determine that the said was guilty of the aforesaid charge and the said was thereupon convicted of the offense aforesaid, to wit, of being a vagrant, in that he the said is a child of the age of years having sufficient bodily health and mental capacity to attend the public schools, was, on the day of , 188 , found wandering in the streets in said of a truant without any lawful occupation.

And, whereas, after the said complaint was satisfactorily established, the said justice did require the said parent, guardian or master to enter into an engagement in writing to the of , that he would restrain said child from so wandering about; would keep h in his own premises or in some lawful occupation and would cause h to be sent to some school at least four months in each year, until he becomes fourteen years old. And the said parent, guardian or master having refused or neglected within a reasonable time so to do, it was adjudged and determined by me that the said should be committed to the alms-house of said county, there being no other place provided for h reception.

Now, therefore, you the said sheriff, constable, marshal or policeman, are commanded forthwith to convey and deliver the said into the custody of the said superintendent and principal keeper of the said alms-house. And you, the said superintendent and principal keeper, are hereby commanded to receive the said into your custody in the said alms-house, and there safely keep until he shall be discharged according to law.

Given under my hand, at the of aforesaid, this day of , 188 .

[*Signature.*]

No. 236.

§ 888. Warrant to Commit Truant Child, having no Parent, Guardian or Master. Plea of Guilty.

COURT, COUNTY OF , } ss:

In the name of the people of the state of New York: To any sheriff, constable, marshal or policeman of the county of , and to the superintendent and principal keeper of the almshouse of the said county, greeting:

Whereas, on the day of , 188 , was brought before me, , a justice of the peace in and for the and county of , , charged on the oath of , which oath was believed by me, with being a vagrant, within the intent and meaning of the statute, and subdivision 8 of section 887 of the Code of Criminal Procedure, in that he is a child of the age of years, having sufficient bodily health and mental capacity to attend the public schools, and was, on the day of , 188 , found wandering in the streets in said of , a truant, without any lawful occupation.

And, whereas, said has no parent, guardian or master, or no parent, guardian or master can be found.

And, whereas, said , on being brought before said justice, was immediately informed by the said justice of said charge against h and of h right to the aid of counsel in every stage of the proceedings, and before any further proceediugs were had.

And, whereas, the said charge was then and there distinctly read and stated to the said , and he, the said , having been given a reasonable time to send for and advise with counsel, did then and there plead guilty to the said charge.

And whereupon the said justice did thereupon adjudge and determine that the said was guilty of the aforesaid charge, and the said was thereupon convicted of the offense aforesaid, to wit, of being a vagrant, in that he, the said , is a child of the age of years, having sufficient bodily health and mental capacity to attend the public schools, was, on the day of , 188 , found wandering in the streets in said of , a truant, without any lawful

occupation. It was adjudged and determined by said justice that the said should be committed to the almshouse of said county, there being no other place provided for h reception.

Now, therefore, you, the said sheriff, constable, marshal or policeman, are commanded forthwith to convey and deliver the said into the custody of the said superintendent and principal keeper of the said almshouse. And you, the said superintendent and principal keeper, are hereby commanded to receive the said into your custody, in the said almshouse, and there safely keep until he shall be discharged according to law.

Given under my hand at the of aforesaid, this day of , 188 .

[*Signature.*]

No. 237.

§ 891. Certificate of Conviction of Vagrant.

I certify that A. B., having been brought before me, charged with being a vagrant, I have duly examined the charge, and that upon his own confession in my presence, [or "upon the testimony of C. D." etc., naming the witnesses], by which it appears that he is a person [pursuing the description contained in the subdivision of section 887, which is appropriate to the case], I have adjudged that he is a vagrant.

Dated at the *town* [or city] of , the day of , 18 .

E. F.,
Justice of the peace of the town of , [or as the case may be.]

No. 238.

§ 892. Warrant to Commit a Vagrant After Trial. Plea, Not Guilty.

COURT, } ss :
COUNTY OF }

In the name of the people of the state of New York: To any sheriff, constable, marshal, or policeman in the

county of , and to the superintendent and principal keeper of the almshouse and penitentiary of the said county, greeting:

Whereas, on the day of , 188 , was brought before me, , a justice of the peace in and for the and county of , charged on the oath of , which oath was believed by me, the said justice, with, on this present day, at the of and being a vagrant within the intent and meaning of the statute.

And whereas the said justice, immediately and before any further proceedings were had, informed the said of the charge against him and of his right to the aid of counsel in every stage of the proceedings, and the said charge was then and there distinctly read and stated to the said , who then and there pleaded not guilty thereto, who was then and there tried upon the said charge by the said justice, who did thereupon hear testimony on oath in support of said charge, and in defense thereof, and on behalf of said person.

And whereas the said testimony was given and evidence was had in the presence and hearing of the said , he the said , having previously thereto been allowed a reasonable time to send for and advise with counsel.

And whereupon the said justice did thereupon adjudge and determine that the said was guilty of the aforesaid charge, and the said was thereupon convicted of the offense aforesaid, to wit, of being a vagrant, in that the said , on this present day, at the of aforesaid, was and is a vagrant within the intent and meaning of the statute; and it was adjudged and determined by me that the said , who is not a notorious offender, should be committed to the alms-house of the said county of , or being a notorious offender and improper person to be sent to the alms-house, should be committed to and confined in the alms-house or penitentiary of said county for the term of , at hard labor.

Now, therefore, you the said sheriff, constable, marshal or policeman, are commanded forthwith to convey

and deliver the said into the custody of the said superintendent and principal keeper of the said alms-house or . And you, the said superintendent and principal keeper, are hereby commanded to receive the said into your custody, in the said alms-house or , for the term of at hard labor, and there safely keep until the expiration of the said

Given under my hand, at the of aforesaid, this day of 188 .

[*Signature.*]

No. 239.

§ 892. Warrant to Commit a Vagrant. Plea of Guilty.

COURT, COUNTY OF } ss:

In the name of the people of the state of New York:

To any sheriff, constable, marshal or policeman of the county of , and to the superintendent and principal keeper of the alms-house or of the said county, greeting:

Whereas, on the day of 188 , was brought before me, a justice of the peace in and for the and county of , , charged on the oath of which oath was believed by me, the said justice, with, on this present day, at the of ,

and being a vagrant within the intent and meaning of the statute.

And, whereas, the said justice immediately and before any further proceedings were had informed the said of the charge against h and of h right to the aid of counsel in every stage of the proceedings, and the said charge was then and there distinctly read and stated to the said and he, the said was given a reasonable time to send for and advise with counsel; and, whereas, he, the said did then and there plead guilty to the said charge, and in the presence of the said court, by said plea of guilty, did voluntarily admit and confess that he, the said was and is a vagrant within the intent and meaning of the statute.

And whereupon the said justice did thereupon adjudge and determine that the said was guilty of the aforesaid charge, and the said was thereupon convicted of the offense aforesaid, to wit, of being a vagrant, in that the said was on this present day, at the of aforesaid, was

and is a vagrant within the intent and meaning of the statute; and it was adjudged and determined by me that the said who is not a notorious offender, should be committed to the alms-house of said county of , or being a notorious offender and improper person to be sent to the alms-house, should be committed to and confined in the alms-house or of said county for the term of at hard labor.

Now, therefore, you the said sheriff, constable, marshal or policeman, are commanded forthwith to convey and deliver the said into the custody of the said superintendent and principal keeper of the said alms-house or And you, the said superintendent and principal keeper, or are hereby commanded to receive the said into your custody, in the said alms-house or for the term of at hard labor, and there safely keep until the expiration of the said

Given under my hand, at the of aforesaid, this day of 188 .

[*Signature,*]

No. 240.

§ 893. Information Against Child Begging, etc.

county of , ss:

being duly sworn, deposes and says: That he resides in ; that on the day of , 188 , one , a child of the age of years, was found begging for alms and soliciting charity from door to door in the said of , and was found begging for alms and soliciting charity in a street, highway and public place in said , to wit: in that he

Taken, subscribed and sworn to before me this day of , 188

No. 241.

§ 893. Warrant against a Child Begging, etc.

COURT, }
COUNTY OF , } ss:

In the name of the people of the state of New York: To any peace officer of the county of

Whereas, complaint has this day been made by of the of , in the county of , on oath, before a justice of the said , that on the day of 188 at the of , in said county, one a child of the age of years, was found begging for alms and soliciting charity from door to door, and was found begging for alms and soliciting charity in a street, highway and public place in said to wit: against the peace of the people of the state of New York and the form of the statute in such case provided;

We therefore command you forthwith to take the body of the said and bring h before the said , at the , in the said of , with this warrant, and a return of your doings thereon indorsed, to be dealt with according to law. Hereof fail not at your peril.

Witness the said at the of in the county aforesaid, the day of 188 .

[*Signature.*]

No. 242.

§ 893. Warrant to Commit a Child Found Begging. Plea, Not Guilty.

COURT, }
COUNTY OF , } ss:

In the name of the people of the state of New York: To any sheriff, constable, marshal or policeman in the county of , and to the superintendent and principal keeper of the almshouse of the said county, greeting:

Whereas, on the day of , 188 , was brought before me, , a justice of the peace

in and for the and county of , , charged on the oath of , which oath was believed by me, the said justice, with being a child of the age of years, who was, on the day of , 188 , found begging for alms and soliciting charity from door to door in said of and who was on the same day found begging for alms and soliciting charity in a street, highway and public place in said city, to wit:

And, whereas, the said justice, immediately and before any further proceedings were had, informed the said of the charge against him, and of his right to the aid of counsel in every stage of the proceedings, and the said charge was then and there distinctly read and stated to the said , who then and there pleaded not guilty thereto, who was then and there tried upon the said charge by the said justice, who did thereupon hear testimony on oath in support of said charge, and in defense thereof, and on behalf of said person.

And, whereas, the said testimony was given and evidence was had in the presence and hearing of the said , he , the said , having previously thereto been allowed a reasonable time to send for and advise with counsel.

And whereupon the said justice did thereupon adjudge and determine that the said was guilty of the aforesaid charge, and the said was thereupon convicted of the charge aforesaid, to wit, of being a child of the age of years, who was, on the day of , 188 , found begging for alms and soliciting charity from door to door in said of , and who was, on the same day, found begging for alms and soliciting charity in a street, highway and public place in said city, to wit:

And it was adjudged and determined by me that the said should be committed to the almshouse of the said county of , to be kept employed and instructed in useful labor until discharged by the county superintendent of the poor, or bound out as an apprentice by him as prescribed by special statutes.

Now, therefore, you, the said sheriff, constable, marshal or policeman, are commanded forthwith to convey and deliver the said into the custody of the said superintendent and principal keeper of the said almshouse. And you, the said superintendent and prin-

cipal keeper, are hereby commanded to receive the said into your custody, in the said almshouse, and keep h employed and instructed in useful labor until discharged by the county superintendent of the poor, or bound out as an apprentice by him, as prescribed by special statutes.

Given under my hand at the of aforesaid, this day of , 188 .

[*Signature.*]

No. 243.

§ 893. Warrant to Commit a Child Found Begging. Plea, Guilty.

COURT, } ss:
COUNTY OF }

In the name of the people of the state of New York:

To any sheriff, constable, marshal or policeman in the county of , and to the superintendent and principal keeper of the alms-house of the said county, greeting:

Whereas, on the day of , 188 , was brought before me, a justice of the peace in and for the and county of , , charged on the oath of , which oath was believed by me, the said justice, with being a child of the age of years, who was on the day of 188 , found begging for alms, and soliciting charity from door to door in said of , and who was on the same day found begging for alms and soliciting charity in a street, highway and public place in said city, to wit:

And, whereas, the said justice immediately and before any further proceedings were had, informed the said of the charge against h and of h right to the aid of counsel in every stage of the proceedings, and the said charge was then and there distinctly read and stated to the said , and he, the said , was given a reasonable time to send for and advise with counsel; And, whereas, he, the said did then and there plead guilty to the said charge, and in the presence of the said court.

And whereupon the said justice did thereupon ad-

judge and determine that the said was guilty of the aforesaid charge, and the said was thereupon convicted of the offense aforesaid, to wit, of being a child of the age of years, who was, on the day of , 188 , found begging for alms and soliciting charity from door to door in said of , and who was on the same day found begging for alms and soliciting charity in a street, highway and public place in said city, to wit:

And it was adjudged and determined by me that the said should be committed to the alms-house of said county of , to be kept employed and instructed in useful labor until discharged by the county superintendent of the poor, or bound out as an apprentice by him as prescribed by special statutes.

Now, therefore, you the said sheriff, constable, marshal or policeman, are commanded forthwith to convey and deliver the said into the custody of the said superintendent and principal keeper of the said alms-house. And you, the said superintendent and principal keeper, are hereby commanded to receive the said into your custody, in the said alms-house, and keep h employed and instructed in useful labor until discharged by the county superintendent of the poor, or bound out as an apprentice by him as prescribed by special statutes.

Given under my hand, at the of aforesaid, this day of , 188 .

[*Signature.*]

No. 244.

§ 899, Subd. 1. Affidavit for Disorderly Person.

COURT, }
COUNTY OF , } ss:

, of in the said of , being duly sworn, says, that she is the wife of of said , that she complains of her said husband of being a disorderly person, according to section 899 of the Code of Criminal Procedure, for that he has actually abandoned his wife and children without adequate support, and has left them in danger of becoming a burden upon the public, and he neglects to provide for them ac-

cording to his means. Deponent further says that for several days last past he has actually abandoned his family without adequate support, and left them in danger of becoming a burden upon the public, and that such family is not possessed of property or of the means of obtaining a livelihood without the aid of such husband.

Taken and sworn to this day of , 188 , before me,

[*Signature.*]

No. 245.

§ 899, Subd. 1. Warrant for Disorderly Person.

COURT, } ss :
COUNTY OF , }

In the name of the people of the state of New York.

To any peace officer in the county of :

Whereas, complaint, and on oath, has this day been duly made by of the of , in the county of , before me, a justice of the said of , that on the day of 188 , at the of in said county, and for several days last past, one was and is a disorderly person, for that he has actually abandoned his wife and children without adequate support, and has left his wife and children in danger of becoming a burden upon the public; and has neglected to provide for his wife and children according to his means, against the peace of the people of the state of New York and the form of the statute in such case provided.

We, therefore, command you forthwith to apprehend and take the body of the said and bring him before the said , at the in the said of , for examination, with this warrant and a return of your doings thereon indorsed, to answer the said complaint, and to be dealt with according to law. Hereof fail not at your peril.

Witness, the said , at the of , in the county aforesaid, the day of , 188 .

[*Signature.*]

By virtue of the within warrant, I have arrested the within named and now have him before the magistrate by whom this warrant was issued.

Dated , 188 .

No. 246.

§ 902. Certificate of Conviction—Disorderly Person.

I certify that A. B., having been brought before me charged with being a disorderly person, I have duly examined the charge, and that upon his own confession in my presence, [or "upon the testimony of C. D., etc., naming the witnesses], by which it appears that he is a [pursuing the description contained in the subdivision of section 899, which is appropriate to the case], I have adjudged that he is a disorderly person.

Dated at the *town* [or city] of , the day of , 18 .

E. F.,
Justice of the peace of the town of , [or as the case may be.]

No. 247.

§§ 941-949. Criminal Statistics.

The following are the instructions and forms as issued by the secretary of state:

By the first section the duty is imposed upon the district attorney of the county in which any criminal court of record is held to furnish, within ten days after the adjournment of said court, to the clerk of such court, such a description of the offense committed by every person convicted of crime, abridged from the indictment as would be sufficient to maintain the averments relating to such offense, or necessary to be made in an indictment for a second offense.

The object of the law is to furnish evidence which will be sufficient, on an indictment for a second offense, to prove the facts of a prior conviction. A general statement that the defendant was convicted of "grand larceny," or of "larceny" or of "arson in the second degree," or any other similar and general description of the offense, will not prove the facts necessary to be established on the trial of an indictment for a second or subsequent offense. Such an indictment must aver that the defendant, at a particular court, held at a particular time and place, before persons to be named, was convicted of a specific offense, which must be stated with as

much precision and certainty, as to time, place, manner, person on whom committed, and all the legal ingredients to constitute crime, as in the first indictment. Of course these averments must be sustained by proof; and the description furnished by the district attorney is the proof which the law intends should be adduced. This is done to promote public justice, to save trouble to the district attorneys, and to avoid the enormous expense of procuring exemplifications of records of conviction. By the act prefixed, the legislature has more distinctly and directly declared this object, and what the statement must contain to accomplish it.

These general remarks, will, perhaps, be sufficient to guide district attorneys in preparing their statements. But as section 949 of the prefixed act requires the secretary of state to publish forms and instructions for its execution, I proceed to discharge the duty, so far as the nature of the subject will admit. To furnish forms for all cases of criminal convictions would be a work of unnecessary labor and of no practical utility. All that can be done is to give general directions applicable to the great mass of cases, and a few instances of forms to exemplify the instructions.

Generally speaking, it will be more convenient, and more likely to insure accuracy, to recite the charging part of the indictment, omitting only the synonymous words which it sometimes contains. Thus, in a case of *perjury*, where the indictment necessarily contains very special averments, the statement of conviction may be in the following form:

John Jackson, having been indicted, for that, at a circuit court held at, etc., in and for the county of , on the , day of, 18 , a certain issue joined in the supreme court between Thomas Stiles, plaintiff, and John Doe, defendant, in a plea of trespass on the case, came on to be tried before the said circuit court, and a jury of the county then and there duly impanelled and sworn; and that the said John Jackson was then and there produced as a witness by and on behalf of the said John Doe, and was then and there duly sworn according to law, etc. [reciting the substantial part of the indictment]; and having been duly tried by a jury, and found guilty of the offense of which he was so indicted, he is thereupon by the court here sen-

tenced to imprisonment in the State prison at Auburn for *three* years.

A similar form will be necessary in stating convictions for *dueling, challenges to fight, unlawful marriages, incest, bribery,* and many other offenses, particularly *misdemeanors* of all kinds, in which special averments are necessary to describe the offense.

There are some cases in which an abbreviated form may be adopted, of which the following are examples:

Murder. John Jackson, having been duly tried by a jury and found guilty of murder, for which he had been indicted, in feloniously killing Thomas Styles, on the day of , at the town of , in the county of , by feloniously shooting the said Styles with a pistol loaded with gunpowder and ball, he is sentenced, etc.

Arson in the first degree. James Jackson, having been duly tried by a jury, and found guilty of arson in the first degree, for which he had been indicted, in willfully and feloniously burning in the night-time, on the day of , at the town of , in the county of , the dwelling-house of John Styles, in which there was at the time a human being, to wit, Nancy Stiles, he is sentenced to be imprisoned, etc.

Arson in the second degree. John Jackson, having been duly tried by a jury, and found guilty of arson in the second degree, for which he had been indicted, in willfully burning the inhabited dwelling-house of Thomas Stiles, on the day of , , at the town, etc., in which dwelling-house there was at the time a human being, to wit, William Jones, he is sentenced, etc.

Manslaughter. James Williams, having been duly tried by a jury, and found guilty of manslaugter in the first degree [or whatever degree was found by the jury], for which he had been indicted, in killing John Doe, on the day of , at the town of , in the county of , by stabbing him with a knife, while he, the said James Williams, was engaged in the perpetration of a burglary upon the house of the said John Doe, he is sentenced to imprisonment in the state prison at Sing Sing for and during his natural life.

The various degrees of manslaughter depend so much on the circumstances of each case, that as a general rule,

the form of reciting the charging part of the indictment, as given before in the case of *perjury*, had better be adopted, as there will be much less liability to mistake.

Rape. James Jackson, having been duly tried by a jury, and found guilty of rape, for which he had been indicted, in carnally and unlawfully knowing Julia Jones, a female child under the age of ten years, on the day of , at the town of , in the county of , he is sentenced to imprisonment in the state prison at Auburn for ten years.

Or, in forcibly ravishing Eliza Stevens, on the day of , at the town, etc., he is sentenced, etc.

Assault with intent to kill. James Thomas, having been duly tried by a jury, and found guilty of shooting a pistol loaded with gunpowder and ball at William Townsend, on the, etc., at the town, etc., with intent to kill the said Townsend, for which he had been indicted, he is sentenced, etc.

Larceny. John Jackson, having been duly tried by a jury, and found guilty of having, on the, etc., at the town, etc., feloniously taken and carried away one gold watch of the value of , the personal property of William Jones, for which offense he has been indicted, he is sentenced to imprisonment, etc.

Pocket picking. John Jackson, having been duly tried by a jury, and found guilty of having, on the, etc., at the town, etc., feloniously stolen, , from the person of William Jones, one gold watch of the value of twenty-six dollars, for which offense he had been indicted, he is sentenced, etc.

Receiving stolen goods. John Jackson, having been duly tried by a jury, and found guilty of having, on the, etc., in the town, etc., received of and from one Thomas Wilson, one silver watch of the value of twenty dollars, the personal property of William Jones, which had been theretofore feloniously stolen by the said Thomas Wilson from the said William Jones, for which offense he had been indicted, he is sentenced, etc.

Assault and battery. John Jackson, having been indicted for unlawfully assaulting, striking and beating Thomas Jones, on the, etc., at the town of, etc., and having been duly tried by a jury on the said indictment, and found guilty, he is sentenced to six months' imprisonment in the county jail.

When the conviction is founded on a plea of confession, the commencement of the form should vary from those before given, and should be thus:

John Jackson, having been indicted for larceny, in having, on the , , at the town of, etc., feloniously stolen, taken and carried away one gold watch of the value of twenty-six dollars, the personal property of William Jones, and on being arraigned upon the said indictment having confessed the said offense, and pleaded guilty to said indictment, he is sentenced, etc.

Where there are several counts in an indictment, intended to describe the same offense, the statement of the crime need not be repeated according to the formal variations in the different counts, but should be stated once only, according to the count which was proved on the trial.

The foregoing instructions are addressed more particularly to *district attorneys*, although they will be useful to clerks of criminal courts, to enable them to prepare entries of judgments when that duty is neglected by the district attorney.

The following appear to be the only instructions necessary to be given to *clerks of criminal courts:*

They are instructed to report promptly every case of neglect, by a district attorney, to furnish them with the statements required by the statute to be prepared by him.

But the judgment must be entered in the minutes at the time of the sentence or before the court adjourns, and the transcript must be sent within twenty days after the adjournment; and if the district attorney has omitted to prepare the statements of the offenses upon which convictions have been had, *the clerk must do it for his own protection*, and submit them to the court before entering them in the minutes.

A transcript may and should contain all the convictions had at the same term or session of the court. The following will be the form of the caption:

Transcript of the entries in the minutes of the court of general sessions of the peace, held at the court house in the town of , in and for the county of , on the day of , one thousand eight hundred and , by and before , esquires, justices of the sessions of the county, of all convictions for criminal

offenses had at the said court, and of the sentences thereon.

It is important that the title of the court and the names of the judges should be given in full.

The minutes of the judgment or conviction and of the sentence are then to be copied, separately.

The minutes of the trial are not required by law, and are of no use, and the practice of some clerks of copying out those minutes containing the names of jurors and witnesses is altogether irregular and improper.

After entering all the convictions and sentences the following certificate should be added:

I, , clerk of the county of , do hereby certify that the foregoing is a true and correct transcript of all the convictions for criminal offenses had at the court of , held in and for the said county on the , as entered in the minutes of said court kept by me, as the clerk thereof, and of the sentences thereon.

In witness whereof, I have hereunto subscribed my name, and affixed the seal of my office, the day of , 18 .

In the city and county of New York, the clerk of the criminal courts will of course describe his official character according to the fact, and the clerks of all other criminal courts of record will also use their peculiar official titles in this certificate.

Under section 942 of the act, herewith transmitted, it is required of the clerk of the court to transmit within twenty days, to the office of the secretary of state, the statements which shall be furnished by the district attorney. They should be made under this caption:

Statement of the number of indictments tried at the court of , held at the court-house in the , in and for the county of , on the day of , in the year one thousand eight hundred and by and before , esquire, justice of supreme court of the judicial circuit or county judge, and and , justices of the sessions of the said county, and also the number of indictments pending in the said court against persons who were discharged during the session of the said court without trial.

The whole number of indictments tried at the said court was .

Of which was for murder, in which the defendant was .

Three for grand larceny, in two of which the defendants were , and in one he was .

Five for petit larceny, in which all the defendants were .

One for obtaining money under false pretenses, in which the defendant was .

One for misdemeanor, in keeping a disorderly house, in which the defendant was .

One for assault and battery in which the defendant was .

That the whole number in which convictions were had was , and the whole number in which the defendant was acquitted was .

That the whole number of indictments on which persons were discharged without trial during the session of the said court was .

Of which was for assault and battery.

And were for larceny.

[Or, and that no person was discharged at the said court without trial.]

I, , clerk of the county of , and clerk of the court of oyer and terminer, held in and for the county of , on the day of , 18 , do hereby certify that the foregoing is a true and correct statement of the number of indictments tried at the said court, and of the number of indictments against persons who were discharged at the said court without trial.

In witness whereof, I have hereunto subscribed my name, and affixed the seal of my office, this day of , 18 .

This form will of course be varied according to the style and name of the court, whether of general sessions of the peace, oyer and terminer, mayor's court, recorder's court or otherwise, and according to the official title of the clerk.

In case of convictions on plea of guilty the following form may be used:

There were also two persons convicted at the said court upon their own confession and plea of guilty, one of whom was indicted for , and the other for .

By section 944 of the act, herewith transmitted, county clerks are required to transmit to the secretary of state

copies of all certificates of convictions by any court of special session filed with them.

The following will be the form of such returns:

A return of copies of all certificates of convictions made by courts of special sessions in the county of , filed with the county clerk of the said county, since the transmission by him of any transcripts of criminal convictions.

The certificates are then to be copied *verbatim*, to which the following certificate should be added:

I, , county clerk of the county of , do hereby certify that the preceding are true and correct copies of all certificates of convictions made by any court of special sessions, and filed in my office within the period above specified.

Given under my hand and seal of office, this day of , 18 .

The reports of county clerks must be written in a plain hand, so that no mistakes may occur in the filing and recording thereof in the State Department, Any material informality in said reports will compel the Secretary to send them back at the expense of the county clerks for amendment, and the penalty will be enforced as if they never had been transmitted. Hereafter the criminal statistical year will end on the 30th October, so as to give the necessary time to make up the annual report to the legislature.

The transcripts of convictions and the copies of certificates must be on separate sheets of paper, and should be inclosed in a strong envelope or wrapper, directed to the secretary of state, and sent by mail or by express.

It will be perceived by the provisions contained in the law that within twenty days after the adjournment of any criminal court of record, the sheriff in the county in which such court shall have been held, is required to transmit to the office of the secretary of state, certain statistics in relation to persons convicted of criminal offenses.

In section 945 it is provided that the sheriffs of the respective counties in which incorported cities are situated shall also transmit a statement of the number of persons convicted in city courts, courts of special sessions and police courts in those cities, together with such specifications in each case as required by said section. Such

returns must be regularly transmitted to the office of the secretary of state, on the first day of every month, in order that they may be fully entered in the annual report required from this office.

Section 949 of the law, herewith transmitted, imposes the duty upon the secretary of state to issue such forms of instruction as he may deem proper and requisite for the execution of the duties therein prescribed. Accordingly, the following instructions to sheriffs are given:

First. To all sheriffs transmitting reports which relate only to persons convicted in courts of *record*, the following will be the form of *caption*.

Report of the sheriff of the county of , to the secretary of state of the state of New York, respecting the persons convicted of offenses at the court of general sessions of the peace (or at any other court of record), held in and for the said county, on the day of , , made pursuant to the fourth section of section 945, of the Code of Criminal Procedure.

The following will be the *subjects* of the report:

First. You will state the *name* of the convict, and if he or she has two more names, you will state them.

Second. The crime of which *he or she was convicted*, at the court held in your county, such as larceny, robbery, etc,, in general terms.

Third. His or her occupation, whether a mariner, tradesman, blacksmith, merchant, lawyer, tailoress, and the like.

Fourth. Age at the time of conviction, and sex.

Fifth. Is he or she married or single.

Sixth. His or her native country.

Seventh. The degree of instruction he or she has received; whether he or she can read and write, or can read only, or whether he or she be ignorant and entirely uneducated. What opportunities has he or she had of religious instruction.

Eighth. Whether his or her parents, or either of them, are living, and which of them.

Ninth. Whether he or she has formerly been imprisoned for any offense; if any, state it.

Tenth. His or her habits in respect to the immoderate use of ardent spirits.

Eleventh. Any other fact or circumstance in his or her

condition, habits or circumstances that you may deem useful to communicate.

This return must be made within *twenty* days after the adjournment of every criminal court of record held in the county, and according to the annexed tabular form marked A, *and in no other form*, and it should be signed by the sheriff in his official character, and dated at the time of signature.

The opportunities which the jailers and turnkeys have of conversing with the prisoners will always enable them to acquire the knowledge necessary to make out the statements; and the sheriff should instruct them accordingly, to enable them to do so. Surplus copies of this circular will be transmitted, which should be kept in the jails, for the information of their keepers. Constables who bring prisoners to the jail will often be able to communicate information upon many of the subjects. The friends and relatives, also, of the convict should have no objection to do the same; and during the trial of the cause, the witnesses will be able to inform the sheriffs generally on all the desired particulars.

With all these means of information, the results will, doubtless, sometimes be imperfect. Still they are ample, and if faithfully improved, the returns will be almost universally full and accurate.

Second. To the sheriffs named in section 945 *of the act hereto prefixed.*

This duty relates to convictions in city courts, courts of special sessions and police courts, held in the various cities of the State. The reports, which should be transmitted to this office on the first day of every month, will be in tabular form, like the annexed, marked B. The form must be printed on ruled paper, the ruling directly opposite the printed matter on the left margin of the report, in order that a systematic report may be had from all the sheriffs alike.

(A.)

FORM OF REPORT CONCERNING PERSONS CONVICTED IN COURTS OF RECORD.

REPORT of the Sheriff of the county of to the Secretary of State of the State of New York, respecting the persons convicted of criminal offenses at the Court of , held in and for the said county, on the day of , 18 , made pursuant to the 945 section of the Code of Criminal Procedure.

Name of convict.	Crime of which convicted.	Occupation.	Sex.	Age.	Social relations.
James Edwards alias Thomas Smith.	Passing counterfeit bank bills.	Laborer.	Male.	35	Married.
Eliza Jones.	Arson.	Tailoress.	Female.	20	Single.

FORM OF REPORT—*Continued.*

Place of birth.	Secular instruction.	Religious instruction.	Parents.	Former offense.	Habits of life.
Massachusetts.	Read and write.	Had religious instruction.	Father.	Petit larceny.	Temperate.
New York State.	Cannot read or write.	Never had religious instruction.	Mother.	None	Intemperate.

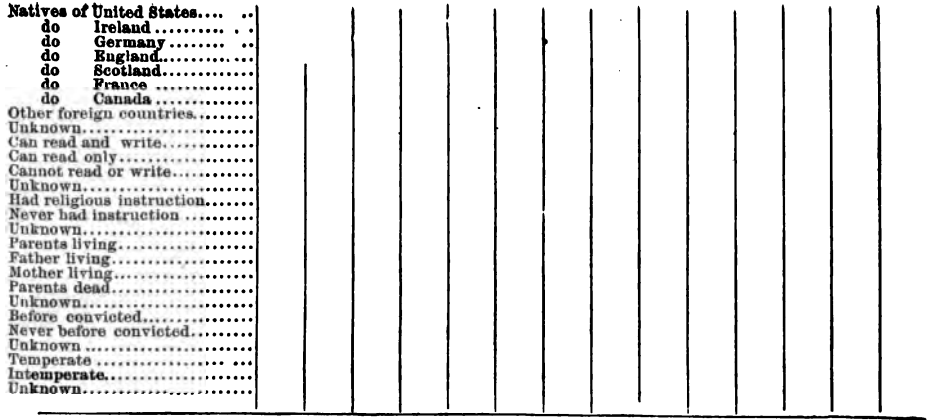
Dated *Sheriff of the County of*

(B.)

FORM OF REPORT CONCERNING PERSONS CONVICTED AT COURTS OF SPECIAL SESSIONS.

REPORT of the Sheriff of the county of to the Secretary of State, respecting the persons convicted of criminal offenses at the Courts of Special Sessions, held in and for the city of , for the month of , 18 , pursuant to section 945, Code of Criminal Prhcedure.

[Write the offenses in this heading, classifying them in alphabetical order.	Assault.	Assault and battery.	Breach of the peace.	Drunk and disorderly.	Disorderly conduct.	False pretenses.	Gaming houses.	Intoxication.	Misdemeanor.	Nuisance.	Petit larceny.	Riot.	Vagrancy.	Violating city ordinance.
Number reported.....														
Males.....														
Females.....														
Under 15 years of age.....														
From 15 to 21 years of age.....														
do 21 to 25 do														
do 25 to 30 do														
do 30 to 40 do														
do 40 to 50 do														
do 50 to 60 do														
Over 60 years of age.....														
Unknown.....														
Married.....														
Married and having children....														
Single.....														
Unknown														



Dated

Sheriff of the County of

No. 248.

§ 945. Criminal Statistics.

COURT OF
COUNTY OF
THE PEOPLE
vs. } day of 188

Question—What is your name and occupation?
Answer—
Question—What is your age?
Answer—
Question—Where were you born?
Answer—
Question—Are you married or single?
Answer—
Question—What religious instruction have you received and in what religious denomination have you received it?
Answer—
Question—What education have you received?
Answer—
Question—Are your parents living or dead?
Answer—
Question—Are you temperate or intemperate?
Answer—
Question—Have you been before convicted, or not, of any crime; if you have, of what crime and where convicted?
Answer—

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